United Nations

# Report of the Committee against Torture

## Thirty-ninth session
## (5-23 November 2007)

## Fortieth session
## (28 April-16 May 2008)

**General Assembly**
**Official Records**
**Sixty-third Session**
**Supplement No. 44**

**General Assembly**
Official Records
Sixty-third Session
Supplement No. 44

# Report of the Committee against Torture

## Thirty-ninth session
## (5-23 November 2007)

## Fortieth session
## (28 April-16 May 2008)

United Nations • New York, 2008

*Note*

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

**ISSN 1020-170X**

[5 November 2008]

## Contents

| Chapter | | Paragraphs | Page |
|---|---|---|---|
| I. | ORGANIZATIONAL AND OTHER MATTERS | 1–16 | 1 |
| | A. States parties to the Convention | 1–3 | 1 |
| | B. Sessions of the Committee | 4 | 1 |
| | C. Membership and attendance at sessions | 5 | 1 |
| | D. Solemn declaration by the newly elected members | 6 | 1 |
| | E. Election of officers | 7 | 1 |
| | F. Agendas | 8–9 | 2 |
| | G. Participation of Committee members in other meetings | 10 | 2 |
| | H. General comments | 11 | 2 |
| | I. Activities of the Committee in connection with the Optional Protocol to the Convention | 12 | 2 |
| | J. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture | 13 | 3 |
| | K. Participation of non-governmental organizations | 14 | 3 |
| | L. Participation of national human rights institutions | 15–16 | 3 |
| II. | SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION | 17–23 | 4 |
| III. | CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION | 24-45 | 5 |
| | Benin | 32 | 6 |
| | Estonia | 33 | 12 |
| | Latvia | 34 | 18 |
| | Norway | 35 | 26 |
| | Portugal | 36 | 29 |
| | Uzbekistan | 37 | 33 |
| | Algeria | 38 | 40 |
| | Australia | 39 | 46 |
| | Costa Rica | 40 | 53 |
| | Iceland | 41 | 58 |

Indonesia 42 62

Sweden 43 72

The former Yugoslav Republic of Macedonia 44 79

Zambia 45 84

IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS 46–58 91

Follow-up procedure to conclusions and recommendations from May 2003 to May 2008 94

V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION 59–72 99

A. General information 59–63 99

B. Summary account of the result of the proceedings concerning the inquiry on Brazil 64–72 99

VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION 73–99 102

A. Introduction 73–76 102

B. Interim measures of protection 77–80 102

C. Progress of work 81–92 103

D. Follow-up activities 93–99 106

VII. FUTURE MEETINGS OF THE COMMITTEE 100–101 163

VIII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES 102 164

Annexes

I. States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as at 16 May 2008 165

II. States parties that have declared, at the time of ratification or accession, that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 16 May 2008 170

III. States parties that have made the declarations provided for in articles 21 and 22 of the Convention, as at 16 May 2008 171

IV. Membership of the Committee against Torture in 2008 174

V. Membership of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2008 175

VI. General comment No. 2 176

VII. First annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 183

VIII. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture 201

IX. Overdue reports . . . . . . . . . . 203

X. Country rapporteurs and alternate rapporteurs for the reports of States parties considered by the Committee at its thirty-ninth and fortieth sessions (in order of examination) . . . . . . . . . . 210

XI. Decisions of the Committee against Torture under article 22 of the Convention . . . . . . . . . . 211

A. Decisions on merits . . . . . . . . . . 211

Communication No. 269/2005: *Ali Ben Salem v. Tunisia* . . . . . . . . . . 211

Communication No. 297/2006: *Bachan Singh Sogi v. Canada* . . . . . . . . . . 224

Communication No. 299/2006: *Jean Patrick Iya v. Switzerland* . . . . . . . . . . 238

Communication No. 293/2006: *J.A.M.O. et al v. Canada* . . . . . . . . . . 245

Communication No. 301/2006: *Z.K. v. Sweden* . . . . . . . . . . 256

Communication No. 303/2006: *T.A. v. Sweden* . . . . . . . . . . 265

Communication No. 309/2006: *R.K. et al v. Sweden* . . . . . . . . . . 273

Communication No. 311/2007: *M.X. v. Switzerland* . . . . . . . . . . 282

B. Decisions on admissibility . . . . . . . . . . 291

Communication No. 264/2005: *A.B.A.O. v. France* . . . . . . . . . . 291

Communication No. 304/2006: *L.Z.B. et al v. Canada* . . . . . . . . . . 297

Communication No. 308/2006: *K.A. v. Sweden* . . . . . . . . . . 305

## I. ORGANIZATIONAL AND OTHER MATTERS

### A. States parties to the Convention

1. As at 16 May 2008, the closing date of the fortieth session of the Committee against Torture (hereinafter referred to as "the Committee"), there were 145 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"). The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. Since the last report Thailand has become party to the Convention. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The list of States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention is provided in annex II. The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention may be found in the United Nations website (www.un.org - Site index - treaties).

### B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The thirty-ninth session (781st to 810th meetings) was held at the United Nations Office at Geneva from 5 to 23 November 2007, and the fortieth session (811th to 836th meetings) was held from 28 April to 16 May 2008. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.781-836).

### C. Membership and attendance at sessions

5. The eleventh meeting of the States parties to the Convention against Torture, which took place in Geneva on 8 October 2007, held elections to replace five members whose term of office expired on 31 December 2007. The list of members with their term of office appears in annex IV to the present report.

### D. Solemn declaration by the newly elected members

6. At the 811th meeting on 28 April 2008, Ms. Myrna Kleopas and Mr. Adoulaye Gaye, made the solemn declaration upon assuming their duties, in accordance with rule 14 of the rules of procedure.

### E. Election of officers

7. At the fortieth session, on 28 April 2008, the Committee elected Mr. Claudio Grossman as Chairperson and Ms. Saadia Belmir, Mr. Luis Gallegos and Ms. Nora Sveaass as vice-chairpersons and Ms. Myrna Kleopas as rapporteur.

## F. Agendas

8. At its 781st meeting, on 5 November 2007, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/39/1) as the agenda of its thirty-ninth session.

9. At its 811th meeting, on 28 April 2008, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/40/1) as the agenda of its fortieth session.

## G. Participation of Committee members in other meetings

10. During the period under consideration, Committee members participated in different meetings organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR): the Sixth Inter-Committee Meeting, held from 18 to 20 June 2007, was attended by Ms. Belmir, Ms. Sveaass and Mr. Mavrommatis; the latter also participated in the Nineteenth Meeting of Chairpersons from 21 to 22 June 2007. Mr. Gallegos and Ms. Sveaass participated in an expert seminar to discuss freedom from torture, cruel, inhuman or degrading treatment or punishment of persons with disabilities on 11 December 2007. Ms. Sveaass also participated in a meeting organized to assist the Special Rapporteur on how to improve the protection of women from torture on 24 December 2007.

## H. General comments

11. At its thirty-ninth session, the Committee adopted its general comment on the implementation of article 2 of the Convention by States parties. The document has been made public as CAT/C/GC/2 and as annex VI of the present report.

## I. Activities of the Committee in connection with the Optional Protocol to the Convention

12. As required by Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, on 20 November 2007, a joint meeting was held between the members of the Committee against Torture and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter "the Subcommittee on Prevention") (membership of the Subcommittee on Prevention is included in annex V). Both the Committee against Torture and the Subcommittee on Prevention agreed to set up an informal contact group composed of Mr. Wang and Ms. Sveaass for the Committee and Mr. Coriolano and Mr. Tayler for the Subcommittee. A joint statement, with reference to their mutual cooperation, was issued following the first joint meeting (CAT/C/SR.802). A further meeting was held between the Committee and the Subcommittee on 13 May 2008, where the Subcommittee submitted its first public annual report to the Committee (CAT/C/40/2 and Corr.1). The Committee decided to transmit it to the General Assembly (see annex VII).

## J. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture

13. A joint statement with the High Commissioner for Human Rights, the Subcommittee on Prevention of Torture; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Board of Trustees of the United Nations Voluntary Fund for the Victims of Torture was adopted to be issued on 26 June 2008, the International Day in Support of Victims of Torture (see annex VIII).

## K. Participation of non-governmental organizations

14. The Committee has long recognized the work of non-governmental organizations (NGOs) and met with them in private, with interpretation, on the afternoon immediately before the consideration of each State party report under article 19 of the Convention. The Committee considers that this new practice, which has replaced the informal lunchtime briefings that did not have interpretation, is more useful, as all members are able to participate to the discussion. The Committee expresses its appreciation to the NGOs, for their participation in these meetings and is particularly appreciative of the attendance of national NGOs, which provide immediate and direct information.

## L. Participation of national human rights institutions

15. Similarly, the Committee has since 2005 met with the national human rights institutions (NHRIs) as well as other institutions both academic and of civil society where these exist, of the countries it has considered. Meetings with each NHRI which attends take place, in private, usually on the day before consideration of the State party report.

16. The Committee is extremely grateful for the information it receives from these institutions, and looks forward to continuing to benefit from the information it derives from these bodies, which has enhanced its understanding of the information before the Committee.

## II. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

17. During the period covered by the present report eight reports from States parties under article 19 of the Convention were submitted to the Secretary-General. Initial reports were submitted by Honduras, Nicaragua and Chad. Second periodic reports were submitted by El Salvador and the Philippines. A third periodic report was submitted by Azerbaijan. A fourth periodic report was submitted by Colombia and a fifth periodic report was submitted by Spain.

18. As of 16 May 2008, the Committee had received a total of 210 reports.

19. As at 16 May 2008, there were 227 overdue reports (see annex IX).

20. The Committee with two sessions per year is only able to deal with 14 reports, consequently, since 2005 and as an exceptional measure, it has decided to consolidate overdue reports. This measure is reviewed on a case-by-case basis after the consideration of a report, in particular when the Committee considers that the information provided by the State party covers the entire overdue reporting period. The Committee indicates the new date and number of report that the State party should submit in the last paragraph of the concluding observations.

21. At its thirty-eighth session in May 2007, the Committee adopted a new procedure on a trial basis which includes the preparation and adoption of a list of issues to be transmitted to States parties prior to the submission of a State party's periodic report. The State party's replies to the list of issues would constitute the State party's report under article 19 of the Convention. The Committee is of the view that this procedure could assist States parties in preparing focused reports. The lists of issues prior to reporting could guide the preparation and content of the report, and the procedure would facilitate reporting by States parties and strengthen their capacity to fulfil their reporting obligations in a timely and effective manner.

22. The Committee has decided to initiate this procedure in relation to periodic reports that are due in 2009 and 2010. It will not be applied to States parties' reporting obligations where initial reports are concerned or to periodic reports for which a previous report has already been submitted and is awaiting consideration by the Committee. On 15 May 2007, the Committee met with States parties and introduced and discussed the new procedure. The Committee adopted lists of issues for States parties whose reports are due in 2009, at its thirty-ninth session in November 2007. The lists of issues were transmitted to the respective States parties on 28 February 2008, with a request that replies be submitted by 30 June 2009, should the State party wish to avail itself of this new procedure.

23. In addition, the Committee requested information from the 11 States parties eligible for this procedure as to their intention of availing themselves of the new procedure. This information was requested to allow the Committee to plan its meeting requirement to ensure the timely consideration of these reports. As of 16 May 2008, the Czech Republic, Ecuador, Greece, Kuwait, Monaco and Turkey had officially confirmed that they would avail themselves of the new procedure. In addition, Bosnia and Herzegovina, Cambodia and Peru had informally notified the Committee that they too would avail themselves of the new procedure.

## III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

24. At its thirty-ninth and fortieth sessions, the Committee considered reports submitted by 14 States parties, under article 19, paragraph 1, of the Convention. The following reports were before the Committee at its thirty-ninth session and it adopted the respective concluding observations:

| | | | |
|---|---|---|---|
| Benin | Second periodic | CAT/C/BEN/2 | CAT/C/BEN/CO/2 |
| Estonia | Fourth periodic | CAT/C/80/Add.1 | CAT/C/EST/CO/4 |
| Latvia | Second periodic | CAT/C/38/Add.4 | CAT/C/LVA/CO/2 |
| Norway | Fifth periodic | CAT/C/81/Add.4 | CAT/C/NOR/CO/5 and Corr.1 |
| Portugal | Fourth periodic | CAT/C/67/Add.6 | CAT/C/PRT/CO/4 |
| Uzbekistan | Third periodic | CAT/C/UZB/3 | CAT/C/UZB/CO/3 |

25. The following reports were before the Committee at its fortieth session and it adopted the following concluding observations:

| | | | |
|---|---|---|---|
| Algeria | Third periodic | CAT/C/DZA/3 | CAT/C/DZA/CO/3 |
| Australia | Third periodic | CAT/C/67/Add.7 | CAT/C/AUS/CO/3 |
| Costa Rica | Second periodic | CAT/C/CRI/2 | CAT/C/CRI/CO/2 |
| Iceland | Third periodic | CAT/C/ISL/3 | CAT/C/ISL/CO/3 |
| Indonesia | Second periodic | CAT/C/72/Add.1 | CAT/C/IDN/CO/2 |
| The former Yugoslav Republic of Macedonia | Second periodic | CAT/C/MKD/2 | CAT/C/MKD/CO/2 |
| Sweden | Fifth periodic | CAT/C/SWE/5 | CAT/C/SWE/CO/5 |
| Zambia | Second periodic | CAT/C/ZMB/2 | CAT/C/ZMB/CO/2 |

26. In accordance with rule 66 of the rules of procedure of the Committee, representatives of each reporting State were invited to attend the meetings of the Committee when their report was examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports. The Committee expressed its appreciation for this in its conclusions and recommendations.

27. Country rapporteurs and alternate rapporteurs were designated by the Committee for each of the reports considered. The list appears in annex X to the present report.

28. In connection with its consideration of reports, the Committee also had before it:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.2);

(b) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

29. The Committee has adopted a new format for these following deliberations held by the Inter-Committee Meeting and the meeting of Chairpersons of the human rights treaty bodies. The text of conclusions and recommendations adopted by the Committee with respect to the above-mentioned reports submitted by States parties is reproduced below.

30. The Committee has been issuing lists of issues for periodic reports since 2004. This resulted from a request made to the Committee by representatives of the States parties at a meeting with Committee members. While the Committee understands States parties wish to have advance notice of the issues likely to be discussed during the dialogue, it nonetheless has to point out that the drafting of lists of issues has increased the Committee's workload substantially. This is particularly significant in a Committee with such a small membership.

31. The Committee has decided to revise its reporting guidelines for initial and periodic reports in order to bring these in line with the guidelines for the common core document (HRI/MC/2006/3).

### 32. Benin

(1) The Committee against Torture ("the Committee") considered the second periodic report of Benin (CAT/C/BEN/2) at its 797th and 800th meetings, held on 15 and 16 November 2007 (CAT/C/SR.797 and 800), and adopted, at its 807th meeting on 22 November 2007 (CAT/C/SR.807), the following conclusions and recommendations.

#### A. Introduction

(2) The Committee welcomes the report of Benin, which follows the Committee's general guidelines for the preparation of reports, and expresses its appreciation for the opportunity thus afforded to resume its dialogue with the State party. The Committee regrets, however, that the report was submitted with an eight-year delay and that the State party did not make the necessary efforts to implement all the recommendations made by the Committee during the consideration of the initial report of Benin, in 2001 (A/57/44, paras. 30 to 35).

(3) The Committee commends the frankness of the report, which acknowledges shortcomings in the State party's implementation of the Convention. The Committee appreciates the constructive dialogue established with the high-level delegation sent by the State party and notes with satisfaction the replies provided to the questions raised during the dialogue. Lastly, the Committee is gratified that national non-governmental organizations were present during the consideration of the report.

#### B. Positive aspects

(4) The Committee welcomes the State party's efforts to reform its legal and institutional system. In particular, the Committee notes with satisfaction the following positive developments:

(a) The ratification by the State party, on 20 September 2006, of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention");

(b) The ratification by the State party, on 22 January 2002, of the Rome Statute of the International Criminal Court;

(c) The ratification by the State party, on 31 January 2005, of the two Optional Protocols to the Convention on the Rights of the Child;

(d) Recent efforts to strengthen the national legal framework, including:

  (i) The publication of the full text of the Convention in the Official Journal on 5 September 2007;

  (ii) The adoption on 30 January 2006 of Act No. 2006-04 on conditions for the displacement of minors and the suppression of child trafficking in Benin;

  (iii) The adoption on 3 March 2003 of Act No. 2003-07 on the suppression of female genital mutilation in Benin.

(5) The Committee commends the implementation of the 2005-2007 Plan for the Strengthening of the Legal and Judicial Systems (2005-2007) and the State party's efforts to improve conditions of detention with the support of the United Nations Development Programme.

## C. Subjects of concern and recommendations

### Definition of torture

(6) Notwithstanding the Constitutional provisions prohibiting torture, the Committee regrets the absence of a definition of torture and of torture as a specific offence in the State party's criminal legislation, despite the Committee's recommendation to that effect during the consideration of the initial report of Benin in 2001. The Committee takes note, however, of the undertaking given by the delegation to include the definition of torture and characterize it as an offence in the draft Criminal Code (arts. 1 and 4).

> **The State party should take urgent measures to review its criminal legislation so as to include a definition of torture that covers all the elements contained in article 1 of the Convention, as well as provisions criminalizing acts of torture and appropriate penalties which take into account the grave nature of such acts.**

### Absolute prohibition of torture

(7) The Committee is concerned that there is no clear provision in the State party's criminal legislation to ensure that the absolute prohibition against torture is non-derogable (arts. 2 and 15).

> **The State party should incorporate the principle of absolute prohibition of torture into its criminal legislation, which should provide that an order from a superior officer may not be invoked as a justification of torture, and prohibit the use of confessions obtained through torture.**

### Obligation to investigate and right to complain

(8) The Committee is concerned about the existing provisions of the Code of Criminal Procedure on legal proceedings whereby such proceedings may be instituted only at the request of the Public Prosecutor's Office, following a complaint by the victim, which is clearly contrary to article 12 of the Convention (art. 12).

> **The State party should consider abrogating the system of discretionary prosecution in order to comply with article 12 of the Convention and to remove all doubt regarding the obligation of the competent authorities to institute, systematically and on their own initiative, without a prior complaint from the victim, objective and impartial inquiries wherever there is reasonable ground to believe that an act of torture has been committed.**

(9) The Committee regrets that persons suspected of having committed acts of torture have reportedly been protected by Act No. 90-028 of 9 October 1990 granting amnesty for acts, other than those covered by ordinary law, committed between 26 October 1972 and the date of promulgation of the Act, and deplores the resulting impunity (art. 12).

**The State party should ensure that all allegations of acts of torture and ill-treatment are investigated, including those committed between 1972 and 1990, set up a truth commission to shed light on the allegations, and consider abrogating the Amnesty Act of 1990 with a view to prosecuting and punishing the authors of those acts.**

(10) The Committee is concerned at the lack of appropriate legislation and of any effective, independent mechanism to enable victims of torture and ill-treatment to complain and have their case examined promptly and impartially. The Committee also deplores the lack of victim and witness protection legislation and mechanisms (arts. 13 and 14).

**The State party should establish a fully independent complaints mechanism for victims of torture and ensure that measures are adopted to afford adequate protection to all persons who report acts of torture or ill-treatment. The State party should also enhance the capacity of the standing committee for the compensation of victims of injury caused by the State, established by Decree No. 98-23 of 29 January 1998.**

### Non-refoulement

(11) The Committee is concerned at the lack of a legislative framework regulating expulsion, refoulement and extradition. In addition, the Committee is particularly concerned at the fact that the State party's current expulsion, refoulement and extradition procedures and practices may expose individuals to the risk of torture (arts. 3 and 8).

**The State party should adopt a legislative framework regulating expulsion, refoulement and extradition in fulfilment of its obligation under article 3 of the Convention. The State party should also take urgent measures to bring current expulsion, refoulement and extradition procedures and practices fully into line with article 3 of the Convention, in particular:**

**(a) Article 21 of the draft Criminal Code should be amended to include the "danger of being subjected to torture" as one of the grounds for the refusal of extradition, as required by article 3 of the Convention;**

**(b) The expulsion, refoulement and extradition of individuals, including undocumented individuals, should be decided by a court after careful assessment of the risk of torture in each case and should be subject to appeal with suspensive effect;**

**(c) The terms of judicial cooperation agreements signed with neighbouring countries should be revised so as to ensure that the transfer of detainees to another signatory State is carried out under a judicial procedure and in strict compliance with article 3 of the Convention.**

### Fundamental safeguards

(12) The Committee notes with concern that the existing provisions of the Code of Criminal Procedure do not specifically provide for the right of access to a lawyer for persons held in police custody. Of equal concern to the Committee is the fact that a medical examination, which is carried out by a doctor designated by the public prosecutor, is permitted only by decision of the latter or at the request of the detainee. Lastly, the Committee regrets that defendants rarely request legal assistance (arts. 2 and 11).

**The State party should reform the provisions of its Code of Criminal Procedure relating to police custody so as to ensure that persons held in custody are effectively protected from physical and mental harm. In particular, the draft Code of Criminal Procedure should guarantee the right to consult a**

**lawyer and a doctor of one's choice and to contact family members, and should also include the principle of presumption of innocence and the obligation to inform all arrested persons of their right to receive legal assistance.**

**Administration of justice**

(13) The Committee notes with concern that the information received reveals flaws in the State party's justice administration system. There are allegations of widespread corruption among judges and police and gendarmerie officers. The Committee is also concerned about the current provisions of the Code of Criminal Procedure empowering the public prosecutor to remove a judge from a case, which jeopardizes the independence of the judiciary (arts. 2 and 12).

**The State party should take the necessary steps to remedy the shortcomings in the administration of justice, for instance by allocating adequate resources and continuing its efforts to combat corruption. It should also take steps to address the insufficient number of judges and consider reviewing the country's map of judicial districts. The State party should take effective measures to make the judiciary fully independent, in accordance with the related international standards.**

(14) The Committee regrets that, under Beninese criminal law, a minor aged over 13 may be sentenced to deprivation of liberty.

**The State party should take the necessary measures to raise the age of criminal responsibility to an internationally acceptable level.**

**Universal jurisdiction**

(15) The Committee is concerned about the existing provisions of the Code of Criminal Procedure which do not enable the State party to establish and exercise its jurisdiction over acts of torture in accordance with the provisions of the Convention (arts. 6 and 8).

**The State party should take the necessary measures to establish and exercise its jurisdiction over acts of torture when the alleged author of the offence is in Benin, either to extradite or to prosecute him or her, in accordance with the provisions of the Convention.**

(16) The Committee is concerned about information regarding the existence of an agreement between Benin and the United States of America whereby United States nationals in the territory of Benin cannot be transferred to the International Criminal Court to be tried for war crimes or crimes against humanity (art. 9).

**The State party should take appropriate measures to review the terms of this agreement which prevents the transfer of United States nationals in the territory of Benin to the International Criminal Court, in accordance with the provisions of the Convention.**

**Systematic review of detention facilities and living conditions in prisons**

(17) The Committee regrets that, according to information received, some non-governmental organizations (NGOs) do not have systematic access to detention centres. The Committee takes note, however, of the undertaking given by the delegation to remedy the situation by granting NGOs permanent access to detention facilities. While welcoming the bill on the establishment of a national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, the Committee regrets that no systematic inspection mechanism is currently operational in Benin (art. 11).

**The State party should take appropriate measures to grant all NGOs permanent access to detention facilities, pursuant to the undertaking given by the delegation on this subject. The State party should also take the necessary steps to adopt the bill on the national prevention mechanism and to accelerate the process of its establishment.**

(18) While taking note of the efforts made by the State party to improve prison conditions, the Committee remains deeply concerned about living conditions in detention facilities. The Committee has received reports of overcrowding, corruption of prison officials by detainees, lack of hygiene and adequate food, prevalence of disease and lack of adequate health care. The Committee has also received reports that minors are not kept completely separate from adults and that accused persons are not kept separate from convicted persons (arts. 11 and 16).

> **Without waiting for the national prevention mechanism to be established, the State party should take urgent measures to bring conditions in detention centres into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The State party should allocate all the material, human and budgetary resources necessary for this purpose and give priority to:**
>
> **(a) Reducing overcrowding and the high number of prisoners in pretrial detention;**
>
> **(b) Improving food and health care provision for detainees;**
>
> **(c) Reorganizing prisons so that accused persons are detained separately from convicted persons and improving conditions of detention of minors, ensuring that they are detained separately from adults in all circumstances;**
>
> **(d) Appropriate measures to put a definitive end to alleged corruption and ransom demands in prisons;**
>
> **(e) Strengthening judicial supervision of conditions of detention.**

(19) The Committee expresses concern at the deplorable conditions of detention of convicted prisoners on death row, which amount to cruel, inhuman or degrading treatment (art. 16).

> **The State party should take all necessary measures to improve the conditions of detention of prisoners on death row in order to guarantee their basic needs and rights. The State party should take urgent measures to establish a moratorium on executions and to commute death sentences. The Committee also wishes to be informed of the status of the bill on the abolition of the death penalty.**

### National Human Rights Commission

(20) The Committee regrets that the Benin Human Rights Commission is no longer operational (arts. 11 and 13).

> **The State party should take steps to operationalize the Benin Human Rights Commission and make it conform to the Paris Principles.**

### Violence perpetrated by law enforcement officials

(21) The Committee expresses its concern at allegations of beatings by law enforcement officials of the State party and regrets the lack of information on the extent of this practice (arts. 12 and 16).

> **The State party should send a clear message to law enforcement officials that violence and ill-treatment are unacceptable. It should, moreover, take the necessary steps to end this practice and to ensure that prompt, impartial and effective investigations are conducted into allegations of ill-treatment by law enforcement officials and that those responsible are prosecuted and punished with appropriate penalties.**

### Torture and cruel, inhuman or degrading treatment of children

(22) While taking note of the State party's legislative efforts, in particular to eradicate ill-treatment of children, the Committee remains concerned about reports of trafficking, exploitation, prostitution, female genital mutilation, rape and killing of newborn babies. The Committee regrets the lack of statistical data on reports of violence against children and related convictions (arts. 1, 2, 12 and 16).

**The State party should take effective measures to combat and eradicate torture and cruel, inhuman or degrading treatment by adopting a holistic approach to the problem. The State party should take all necessary measures to ensure strict implementation of the relevant legislation by prosecuting and punishing those responsible for such acts. The State party should consider setting up an observatory on the rights of the child, resume consideration of the bill on "vidomégons" and strengthen the system of care for child victims of violence.**

(23) While noting that the State party's legislation prohibits corporal punishment in schools (Circular No. 100/MEN/CAB of 1962), the Committee remains concerned about the absence of legislation prohibiting such punishment in the family and in institutions other than schools. The Committee is also concerned at the frequent use of this practice in education in Benin (art. 16).

**The State party should extend legislation prohibiting corporal punishment to the family and to institutions other than schools. The State party should ensure that legislation prohibiting corporal punishment is strictly enforced and awareness-raising and educational campaigns should be conducted to that effect.**

### Violence against women

(24) The Committee acknowledges the State party's efforts to strengthen the legal framework relating to violence against women and trafficking in women and regrets that the draft Criminal Code does not include a specific offence of domestic violence and trafficking in women. The Committee notes with concern reports of widespread violence against women, particularly trafficking, rape and violence in the family, and regrets the low number of complaints and convictions (arts. 2, 4, 12, 14 and 16).

**The State party should adopt all appropriate measures to prevent, combat and punish violence against women, for instance by incorporating into the draft Criminal Code the offences of family violence, marital rape and trafficking in women and by promptly adopting the bill on the prevention, control and repression of violence against women in Benin. The State party should also set up a rehabilitation and support system for victims.**

### Mob justice

(25) The Committee is concerned at reports that the phenomenon of mob justice persists (art. 16).

**The State party should strengthen its efforts to eliminate the problem of mob justice. The Committee invites the State party to undertake a thorough review of the obstacles to the eradication of the phenomenon and to consider more effective approaches.**

### Training on the prohibition of torture

(26) While acknowledging the State party's significant efforts in providing human rights training to State officials, the Committee regrets, however, the lack of information regarding specific training on the prohibition of torture and cruel, inhuman or degrading treatment and punishment (art. 10).

**The State party should strengthen human rights training programmes for law enforcement officials so as to incorporate the prohibition of torture and cruel, inhuman or degrading treatment and punishment. Such training should also be provided to medical staff.**

(27) The Committee reiterates the recommendation it made during the consideration of the report of Benin in 2001 that the State party should make the declarations provided for in articles 21 and 22 of the Convention.

(28) The Committee encourages the State party to involve NGOs and academic experts in the review of national legislation, including the draft Criminal Code and the draft Code of Criminal Procedure, with a view to bringing them into line with the provisions of the Convention. The State party should take the necessary steps to adopt these draft Codes forthwith.

(29) The State party, with the support of academic institutions, should establish effective mechanisms to collect data and develop criminal and criminology statistics and all statistics relevant to monitoring the national implementation of the Convention. The State party should thus provide in its next periodic report the following data, which will facilitate the Committee's assessment of the implementation of obligations under the Convention:

(a) Statistics on the reception capacity and population of each prison in Benin, including data disaggregated by gender and age group (adults/children), and the number of pretrial detainees;

(b) Statistics on violence in detention centres and police and gendarmerie stations;

(c) Statistics on complaints of alleged torture and action taken;

(d) Statistics on corruption among law enforcement officials and penalties imposed;

(e) Statistics on cases of extradition, expulsion or refoulement, including information on the handing over of detainees under subregional agreements;

(f) Statistics on violence against women and children and outcomes of proceedings instituted.

(30) The Committee welcomes the assurances provided by the delegation that information would be submitted regarding the questions that remained unanswered, including information on the situation of the 13-year-old girl raped by three male nurses in April 2005, on the proceedings initiated and penalties imposed.

(31) The State party is encouraged to disseminate widely the reports submitted by Benin to the Committee and the latter's conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(32) The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting, approved recently by the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.4).

(33) The Committee takes note of the undertaking given by the State party's delegation to implement the Committee's recommendations and requests the State party to provide, within one year, information on action taken in response to the Committee's recommendations on the necessary review of the draft Criminal Code and the draft Code of Criminal procedure and on the recommendations contained in paragraphs 11 and 18 above.

(34) Having concluded that during the consideration of the State party's report sufficient information was presented to make up for the delay in submitting its second report, the Committee requests the State party to submit its next periodic report, which will be considered as its third periodic report, by 30 December 2011.

## 33. Estonia

(1) The Committee against Torture considered the fourth report of Estonia (CAT/C/80/Add.1) at its 793rd and 796th meetings (CAT/C/SR.793 and 796), held on 13 and 14 November 2007, and adopted at its 804th meeting on 20 November 2007 (CAT/C/SR.804) the following conclusions and recommendations.

### A. Introduction

(2) The Committee welcomes the fourth periodic report of Estonia, which generally follows the Committee's guidelines for reporting and expresses its appreciation for the written responses (CAT/C/EST/Q/4/Add.1) provided to its list of issues (CAT/C/EST/Q/4).

(3) The Committee also appreciates the large and high-level delegation of the State party and the positive and frank dialogue conducted with it, as well as the additional oral information provided by the representatives of the State party to questions raised and concerns expressed during the consideration of the report.

## B. Positive aspects

(4) The Committee welcomes the ratification, inter alia, of:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2006;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2004;

(c) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2003;

(d) The United Nations Convention against Transnational Organized Crime, in 2003.

(5) The Committee also welcomes the entry into force of:

(a) The Victim Support Act in 2004 and its amendment in 2007;

(b) The State Legal Aid Act, in 2005;

(c) The new Code of Criminal Procedure, in 2004;

(d) The amendment to the Refugees Act, in 2003.

(6) The Committee further notes with satisfaction the important effort made for the renovation of detention facilities, the closure of old arrest houses and the construction of new prisons, especially the Tartu prison which opened in 2002, to improve the general living conditions of all persons deprived of liberty in the State party, as well as to move from an old style camp-based system to a modern cell-based penitentiary system.

(7) The Committee notes positively the publication of the reports of the European Committee for the Prevention of Torture and the responses by the State party, which enables a general debate by all interested parties.

## C. Principal subjects of concern and recommendations

### Definition of torture

(8) While noting that the Convention has entered into force in the State party in 1991 and the Penal Code in 2002, the Committee continues to regret that the definition contained in article 122 of the Penal Code, even if read in conjunction with the criminal offenses of articles 291, 312 and 324 of the Penal Code, does not fully reflect all elements contained in article 1 of the Convention, notably mental pain and suffering, discrimination and acquiescence of a public official (art. 1).

> **The Committee reiterates its previous recommendation (CAT/C/CR/29/5, para. 6 (a)) that the State party should bring its definition of torture fully into conformity with article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself.**

### Fundamental legal safeguards of detained persons

(9) The Committee is concerned about the practical implementation of the fundamental legal safeguards of detained persons, including access to an independent medical doctor, as well as about the registration of all detained persons (art. 2).

> **The State party should ensure that all detained suspects are afforded, in practice, fundamental legal safeguards during their detention, including the right to access a lawyer, and an independent medical examination, inform a relative and to be informed of their rights at the moment they are deprived of their liberty, including about the charges brought against them, as well as to be promptly presented to a judge.**

**Administrative detention**

(10) The Committee is concerned about the possibility of "administrative detention in jail" and "administrative arrest" (paragraphs 89 and 215 of the State party report) and about the complete absence of information on such detention in the report as well as from the delegation, especially regarding the competent authority and the applicable legal safeguards (art. 2).

> **The State party should provide the Committee with detailed information on such "administrative detention" and insure that the fundamental legal safeguards also apply in such cases.**

**Chancellor of Justice**

(11) While noting that the Chancellor of Justice has been designated as the national protection mechanism pursuant to article 3 of the Optional Protocol the Convention, recognizing its role in inspecting places of detention and welcoming the publication of its reports in different languages, the Committee remains concerned about its independence, mandate and resources, as well as its ability to investigate all complaints of violation of the provisions of the Convention (arts. 2 and 11).

> **The State party should consider establishing a national institution for the promotion and protection of human rights, in accordance with the Paris Principles (General Assembly resolution 48/134, annex) and provide it with the adequate resources to carry out its mandate.**

**Non-refoulement**

(12) While noting that the determination of "a safe country is done on an individual basis by the Citizenship and Migration Board" as well as the list of countries to which persons have been expelled, the Committee is still concerned that the application of the principle of "safe country" may prevent the State party from considering all elements of an individual case, thus not fulfilling all its non-refoulement obligations under the Convention (art. 3).

> **The State party should always assess its non-refoulement obligations under article 3 of the Convention on an individual basis and provide, in practice, all procedural guarantees to the person expelled, returned or extradited.**

**Appropriate penalties for acts of torture in the Penal Code**

(13) The Committee remains concerned about the inadequacy of the penalties applicable to torture, i.e. of articles 122, 291, 312 and 324 of the Penal Code, ranging from "pecuniary punishment" to a maximum of five years imprisonment (art. 4).

> **The State party should ensure that torture is punishable by appropriate penalties which take into account its grave nature, as set out in paragraph 2 of article 4 of the Convention.**

**Training and education on the provisions of the Convention**

(14) The Committee is concerned about the insufficient training regarding the provisions of the Convention for law enforcement personnel, including penitentiary staff, judges and prosecutors. The Committee also notes with concern the lack of specific training of medical personnel acting in detention facilities to detect signs of torture and ill-treatment (arts. 10 and 15).

**The State party should reinforce its training programmes for all law enforcement personnel on the absolute prohibition of torture and other ill-treatment, as well as for prosecutors and judges on the State party's obligations under the Convention. This should include the inadmissibility of confessions and statements obtain as a result of torture.**

**The State party should also ensure adequate training for all medical personnel involved with detainees to detect signs of torture and other ill-treatment in accordance with international standards, such as outlined in the Istanbul Protocol.**

### Complaints, investigations and appropriate sentencing

(15) The Committee notes the supervision activities of prisons by the Ministry of Justice, of arrest houses by the Police Board, of psychiatric institutions by the Health Board and of the Illuka Reception Centre for Asylum-Seekers by the Ministry of Social Affairs and the Defence Forces. The Committee is nevertheless concerned about the inadequate complaint mechanism existing for all places where persons are deprived of liberty and about insufficient oversight and monitoring of such places, as well as the small numbers of perpetrators of acts of torture or cruel, inhuman or degrading treatment or punishment convicted with appropriate sentences for the grave nature of the acts committed (arts. 12 and 13).

**The State party should ensure that complaint mechanisms exist in all places where persons are deprived of liberty and that the oversight and monitoring of such places is adequate.**

**The State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or other cruel, inhuman or degrading treatment or punishment, bring the responsible to justice and punish those convicted with sentences proportional to the gravity of their offence.**

### Inter-prisoner violence

(16) The Committee is concerned about inter-prisoner violence, especially with regard to the incidents that occurred in Murru prison in 2006 where two prisoners were killed, as well as with the insufficient measures taken to prevent and investigate such violence (arts. 12 and 13).

**The State party should promptly, thoroughly and impartially investigate all deaths in detention and all violence amongst prisoners, including any cases involving possible negligence on the part of law enforcement personnel, and bring the responsible to justice, in order to fulfil its obligations under article 12 of the Convention.**

### Code of Criminal Procedure

(17) The Committee is concerned at the fact that, under the Code of Criminal Procedure, the court does not have the right to continue proceedings at its own discretion if prosecution drops charges (paragraph 64 of the State party report), and that prosecution may prolong pretrial detention after the initial period of six months without any justification (art. 13).

**The State party should consider revising its Code of Criminal Procedure in order to regulate the powers of prosecution vis-à-vis the judiciary as well as to establish an obligation for prosecution to justify before the court any prolongation of the initial six months pretrial detention period.**

### Compensation and rehabilitation for victims

(18) While welcoming the increase in compensation to victims of certain crimes, the Committee remains concerned about the apparent absence of compensation for victims of torture and other cruel, inhuman or degrading treatment or punishment, as well as with the lack of appropriate measures for the rehabilitation of victims of torture, ill-treatment, trafficking, and domestic and sexual violence (art. 14).

**The State party should ensure that adequate compensation is provided to victims of torture and other ill-treatment and that the means for as full rehabilitation as possible are also made available to all victims of torture and other ill-treatment, trafficking, and domestic and sexual violence.**

**Overcrowding and conditions of detention**

(19) While welcoming the decrease in the prison population from approximately 4,800 detainees in 2001 to 3,600 in 2007, due to the introduction of various forms of expedited proceedings, which have ranged to 42 per cent of all criminal proceedings, and to alternative mechanisms of detention, the Committee remains concerned about the overall conditions of detention in the State party, including with regard to adequate HIV medical care (art. 16).

**The State party should continue to alleviate the overcrowding of the penitentiary institutions and improve conditions of detention, especially in arrest houses where pretrial detainees are held for long periods in poor and inadequate conditions and should also continue its efforts to reduce the pretrial detention period.**

**The State party should provide adequate food to all detainees and improve the health and medical services in detention facilities, including by making available appropriate treatments, especially to HIV and tuberculosis infected detainees.**

**Trafficking in persons**

(20) While welcoming awareness-raising and prevention campaigns and programmes (including the EQUAL EU cooperation project) as well as the National Plan of Action on trafficking in human beings, the Committee remains concerned about this persistent phenomenon and the absence of specific legislative measures to prevent, combat and punish human trafficking (art. 16).

**The State party should reinforce its legislation and adopt other effective measures in order to adequately prevent, combat and punish human trafficking, especially that of women and children, and should promptly investigate, prosecute and punish all perpetrators of such crimes.**

**The State party should provide the Committee with statistical data on the incidence of trafficking as well as the objectives and results of the implemented measures, including investigations, prosecutions and convictions.**

**The State party should also adopt specific training and sensitization programmes for law enforcement personnel on human trafficking.**

**Domestic violence**

(21) While noting the existence of several programmes and plans aimed at combating domestic violence, the Committee remains concerned about the incidence of such violence and the absence of specific legal measures to prevent and combat it (art. 16).

**The State party should adopt a specific type of criminal offence for domestic violence, and provide protection for victims and their access to medical and legal services, including counselling services.**

**The State party should also promptly investigate, prosecute and punish all perpetrators of such violence and ensure adequate training to sensitize law enforcement personnel on domestic violence, including sexual violence and violence against children.**

**Stateless persons**

(22) The Committee notes the concerns and recommendations of the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on the Rights of the Child. While welcoming the

reduction of statelessness in the State party, the Committee remains concerned at the fact that approximately 33 per cent of the prison population is composed of stateless persons, while they represent approximately 8 per cent of the overall population of the State party (art. 16).

**The State party should adopt all adequate legal and practical measures to simplify and facilitate the naturalization and integration of stateless persons and non-citizens.**

**The State party should also adopt the necessary measures to guarantee that stateless persons and non-citizens are informed of their rights in a language they understand and have access to the fundamental legal safeguards from the moment they are deprived of their liberty, without any discrimination.**

**The Committee reiterates its previous recommendation (CAT/C/CR/29/5, para. 6 (h) and (i)) that the State party should also address the causes and consequences of the disproportionate presence of stateless persons in the prison population and adopt the necessary measures to prevent this phenomenon.**

**The State party should further consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

### Brutality and excessive use of force by law enforcement personnel

(23) While welcoming the establishment of a complaints hotline operated by a non-governmental organization, the Committee remains concerned at allegations of brutality and excessive use of force by law enforcement personnel, especially with regard to the disturbances that occurred in Tallinn in April 2007, well documented by a detailed compilation of complaints (art. 16).

**The State party should promptly, thoroughly and impartially investigate all acts of brutality and excessive use of force by law enforcement personnel and bring the perpetrators to justice.**

**The State party should also reinforce its training programmes for law enforcement personnel, especially for all special police forces, and encourage the State party to adopt the draft code of ethics for the police.**

### Psychiatric facilities

(24) While welcoming the improvement in the assistance of patients with psychiatric illnesses, including the implementation of the Mental Health Act into practice, the Committee is concerned about the general living conditions in psychiatric institutions and inadequate forms of treatment (art. 16).

**The State party should improve the living conditions for patients in psychiatric institutions, ensure that all places where mental health patients are held for involuntary treatment are regularly visited by independent monitoring bodies to guarantee the proper implementation of the safeguards set out to secure their rights, and that alternative forms of treatment, especially community-based treatment, are developed.**

### Data collection relevant to the implementation of the Convention

(25) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and penitentiary personnel, as well as on trafficking, domestic violence and sexual violence.

**The State party should compile and provide to the Committee statistical data relevant to the monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and other ill-treatment, trafficking,**

**domestic, sexual violence and ethnically motivated violence, violence against vulnerable groups, inter-prisoner and inter-patient violence, as well as on compensation and rehabilitation provided to the victims.**

(26) The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

(27) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party.

(28) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(29) The Committee requests the State party to widely disseminate its report, together with the written answers to the Committee's questions and the conclusions and recommendations of the Committee, in all appropriate languages through official websites, the media and non-governmental organizations.

(30) The Committee requests the State party to provide, within one year, information on its response to the recommendations in paragraphs 10, 16, 20, 22 and 23 above.

(31) The State party is invited to submit its next report, which will be the fifth periodic report, by 30 December 2011.

## 34. Latvia

(1) The Committee considered the second periodic report of Latvia (CAT/C/38/Add.4) at its 788th and 790th meetings (CAT/C/SR.788 and 790), held on 8 and 9 November 2007, and adopted, at its 805th and 806th meetings (CAT/C/SR.805 and 806), the following conclusions and recommendations.

### A. Introduction

(2) The Committee welcomes the submission of the second periodic report of Latvia and the information presented therein and expresses its appreciation for the replies by the State party to the follow-up procedure of the Committee. The Committee also expresses its appreciation at the State party's thorough responses to the list of issues in written form (CAT/C/LVA/Q/2/Add.1) which provided additional information on the legislative, administrative, judicial and other measures taken by the State party in order to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, the Committee notes with satisfaction the constructive efforts made by the multisectoral State party delegation to provide additional information and explanation during the dialogue.

### B. Positive aspects

(3) The Committee notes with appreciation that in the period since the consideration of the last periodic report, the State party has acceded to or ratified a number of international instruments, including:

(a) The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, on 22 February 2006;

(b) The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, on 19 December 2005;

(c) The Framework Convention for the Protection of National Minorities, on 6 June 2005; and

(d) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 25 May 2004.

(4) The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) The Criminal Procedure Law which entered into force on 1 October 2005;

(b) The Law on the Procedure for Holding Apprehended Persons which entered into force on 21 October 2005;

(c) The Law on Procedure of Detention on Remand which entered into force on 18 July 2006;

(d) The amendments to the Medical Treatment Law which entered into force on 29 March 2007, introducing a procedure of judicial review of compulsory involuntary placement of patients in the psychiatric hospitals and their subsequent treatment;

(e) The establishment of the new Ombudsman institution on 1 January 2007, replacing the Latvian National Human Rights Office;

(f) The establishment of the State Legal Aid Administration in 2006 and the enactment on 17 March 2005 of the Law On State Guaranteed Free Legal Aid;

(g) The Concept on the Development of Penitentiaries which was adopted by the Cabinet's Decision No. 280 of 2 May 2005 to provide all inmates with treatment that would comply with the necessary standards;

(h) The adoption in 2004 of the State Programme on the Prevention of Trafficking in Human Beings (2004 2008); and

(i) The adoption on 5 December 2003 of the Professional Ethics and Conduct Code of the State Police Personnel.

## C. Principal subjects of concern and recommendations

### Definition of torture

(5) Notwithstanding the State party's assertion that, under the Latvian Criminal Code all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable, the Committee is concerned that the State party has not incorporated into domestic law the crime of torture as defined in article 1 of the Convention (arts. 1 and 4).

> **The State party should incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself.**

### Ombudsman institution

(6) The Committee notes the establishment on 1 January 2007 of the new Ombudsman institution, replacing the former Latvian National Human Rights Office. While noting the broad mandate attributed to the Ombudsman institution and the increase in financial and human resources in 2007, the Committee is concerned that the financial and human resources remain insufficient to respond to the institution's expanded mandate and increasing workload (art. 2).

**The State party should take appropriate measures to ensure the effective functioning of the Ombudsman institution, including the requisite human and financial resources. Furthermore, the State party is encouraged to seek accreditation with the International Coordinating Committee of National Human Rights Institutions to ensure that it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134 of 4 March 1994, including with regard to its independence.**

### Fundamental safeguards

(7) The Committee notes that the new Criminal Procedure Law includes a specific reference to fundamental legal safeguards for detainees, such as access to a defence counsel, but it regrets the lack of a specific reference to the right of access to a doctor. Furthermore, the Committee expresses its concern at reports that the right of effective access to a lawyer is not always realised in practice. In this respect, the Committee is concerned at reports of a shortage of state funded defence lawyers in several districts, especially rural areas, and that the working conditions provided for lawyers in detention and remand centres are not always satisfactory (arts. 2, 13 and 16).

**The State party should take effective measures to ensure that all detainees are afforded fundamental legal safeguards in practice, including the right to have access to a lawyer and a doctor. The Committee emphasizes that persons in custody should benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty and throughout the investigation phase, the whole of the trial and during appeals. Furthermore, the State party should ensure that the lawyers are provided with proper working conditions in the detention and remand centres equivalent to the facilities available in prisons and finance the newly established Legal Assistance Agency.**

### Asylum-seekers

(8) While noting the amendment of the Asylum Law on 20 January 2005 with the deletion of the provision requiring the asylum application to be submitted in writing, the Committee regrets the lack of clarity on the total number of persons seeking asylum in the State party as well as the low asylum recognition rate. The Committee is also concerned at the detention policy applied to asylum seekers and at the short time limits, in particular for the submission of an appeal under the accelerated asylum procedure. Furthermore, the Committee notes that detained foreigners, including asylum seekers, have the right to contact the consular services of their respective country and are entitled to receive legal aid but it is concerned at information provided by the State party delegation that no asylum seekers have requested such legal aid (arts. 2, 3, 11 and 16).

**The Committee recommends that the State party should:**

**(a) Take measures to ensure that detention of asylum seekers is used only in exceptional circumstances or as a last resort, and then only for the shortest possible time;**

**(b) Ensure that anyone detained under immigration law has effective legal means of challenging the legality of administrative decisions to detain, deport or return (refouler) him/her and extend, in practice, the right to be assisted by assigned counsel to foreigners being detained with a view to their deportation or return (refoulement);**

**(c) Extend the time limits established under the accelerated asylum procedure, in particular in order to guarantee that persons whose applications for asylum have been rejected can lodge an effective appeal; and**

**(d) Provide, in the next periodic report, detailed and disaggregated statistics on the number of persons seeking asylum in the State party and the number of such persons in detention.**

**Furthermore, the State party is encouraged to promptly adopt the draft law on the Asylum in the Republic of Latvia which was formally approved during the session of the Committee of the Cabinet of Ministers on 26 March 2007 and is currently being examined in the Parliament.**

**Training**

(9) The Committee notes with appreciation the detailed information provided by the State party on training for judges, including investigative and criminal judges, court staff, the personnel of the Imprisonment Facility Management Board (including medical personnel), employees of the Ministry of Health (including the personnel of psychiatric hospitals), public prosecutors, employees of the Ministry of Interior and its subordinate structures (including the State Police and the State Border Guard). However, the Committee regrets the limited information on monitoring and evaluation of these training programmes and the lack of available information on the impact of the training conducted for law enforcement officials, prison staff and border guards, and how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

> **The State party should further develop educational programmes to ensure that all law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All personnel should receive specific training on how to identify signs of torture and ill-treatment. The Committee recommends that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians and that the Manual is translated into the Latvian language. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.**

**Detention on remand, including pretrial detention**

(10) While noting the new Criminal Procedure Law, which reduces the apprehension phase from 72 to 48 hours and introduces the system of an investigative judge who shall decide on the application of detention on remand as well as reports that the duration of detention on remand has been reduced, the Committee remains concerned at reports of prolonged periods of detention on remand, including pretrial detention, and the high risk of ill-treatment which it entails and regrets the lack of use of alternatives to imprisonment. While noting the Law on the Procedure of Holding Detainees which requires the procedure of holding criminal suspects in police short-term detention cells and sets standards for conditions of detention in these cells, the Committee is concerned at information that this does not apply to cells in small police stations where detainees can be held up to 12 hours (arts. 2, 11 and 16).

> **The State party should take appropriate measures to further reduce the duration of detention in custody and detention before charges are brought, and develop and implement alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences.**

(11) The Committee notes a number of initiatives taken by the State party to improve the conditions of detention for persons under the age of 18, including in the juvenile correctional facilities, such as the establishment of the Ministry of Children and Family Affairs and the State Children Rights Protection Inspectorate under its auspices to monitor the regime and conditions of juvenile detention as well as the adoption of the Basic Policy Guidelines for the Enforcement of Prisons Sentences and Detention of Juveniles for 2007-2013. However, the Committee expresses its concern at reports that juveniles are often held in pretrial detention for prolonged periods and at the high percentage of juveniles remanded in custody (arts. 2, 11 and 16).

> **The State party should increase its efforts to bring its legislation and practice as regards the arrest and detention of juvenile offenders fully in line with internationally adopted principles, including by:**
>
> **(a) Ensuring that deprivation of liberty, including pretrial detention, should be the exception, to be used only as a last resort and for the shortest time possible;**
>
> **(b) Developing and implementing alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences;**

**(c) Adopting an action plan based on the Basic Policy Guidelines and ensuring the necessary resources for its effective implementation and follow up; and**

**(d) Taking further measures to improve the living conditions in detention facilities, elaborating more contemporary and modern programmes aimed at re socialisation, and ensuring training of prison personnel to raise their professional qualification in light of their work with juveniles.**

**Conditions of detention**

(12) The Committee is concerned that, notwithstanding the measures taken by the State party to improve conditions of detention, including the adoption of the 2005 Concept on the Development of Penitentiaries and the establishment of the new Olaine Prison Hospital on 1 August 2007, there is continuing overcrowding in prisons. The Committee takes note of information provided on the improvement of conditions in some detention facilities and prisons but is concerned at the overall conditions of detention, including unsuitable infrastructures and unhygienic living conditions, in other prisons, remand centres and police short-term detention cells. The significant increase in the number of applications lodged with the Latvian National Human Rights Office (now the Ombudsman institution), including alleged violations of the right to human treatment and respect for human dignity (alternatively treatment in places of deprivation of liberty) in different kind of institutions, including closed institutions, is also a matter of concern. Additionally, the Committee is concerned at the occurrence of inter-prisoner violence and lack of statistical data that may provide breakdown by relevant indicators to facilitate determination of root causes and design of strategies to prevent and reduce such occurrences (arts. 11 and 16).

**The Committee recommends that the State party should:**

**(a) Continue its efforts to alleviate the overcrowding of penitentiary institutions, including through the application of alternative measures to imprisonment and the increase of budgetary allocations to develop and renovate the infrastructure of prisons and other detention facilities in the context of the Concept on the Development of Penitentiaries;**

**(b) Take effective measures to further improve living conditions in the detention facilities, including prisons and police short term detention cells; and**

**(c) Monitor and document incidents of inter prisoner violence with a view to revealing root causes and designing appropriate prevention strategies and provide the Committee with such data, disaggregated by relevant indicators, in the next periodic report.**

**Furthermore, the Committee encourages the Ministry of Justice to proceed with the drafting of the Standards of the Places of Deprivation of Liberty.**

(13) While noting the elaboration and implementation of the 2005 guidelines for the prison personnel providing instructions for the treatment of persons at risk of committing suicide, the Committee is concerned at the high number of suicides and other sudden deaths in detention facilities (arts. 11 and 16).

**The State party should strengthen its efforts to prevent suicide and self harm risks in custody. The State party is encouraged to adopt a suicide prevention policy for prisons, including screening, reporting, data collection, training and education and establish social rehabilitation units for prisoners as indicated in the training seminar on "Suicide Prevention in Prisons" on 18 May 2005. The State party should also ensure that all incidents of suicide and other sudden death are promptly and effectively investigated.**

**Independent monitoring**

(14) The Committee notes information provided on state-guaranteed and non-governmental organization-based monitoring of places, where personal liberty is being limited and that article 13, paragraph 3 of the Ombudsman

Law provides the right "at any time and without a special permit to visit closed-type institutions, to move freely within the territory of the institutions, to visit all premises and to meet in private the persons held in closed-type institutions". However, the Committee is concerned at the lack of systematic and effective monitoring of all places of detention and reiterates its concern noted in paragraph 6 on the insufficient resources allocated to the Ombudsman institution. The Committee is also concerned at the lack of a comprehensive listing of all places of detention, including those of aliens (arts. 2, 11 and 16).

> **The State party should take the necessary measures to effectively and systematically monitor all places of detention. The Committee recommends that the State party develop a comprehensive listing of all places of detention, including places of detention of aliens, and establish a central register of inmates or, alternatively, finalize the development of a common database to be used by the Imprisonment Facility Management Board and the State Probation Service which will allow tracking down every detainee and/or convicted prisoner within the penitentiary system, as well as within the probation system.**

**Conditions in psychiatric institutions and hospitals**

(15) The Committee notes the recent amendments to the Medical Treatment Law, introducing the procedure of judicial review of compulsory involuntary placement of patients in the psychiatric hospitals and their subsequent treatment, and the establishment of a new modern ambulatory mental assistance centre in Riga. However, the Committee remains concerned at conditions in psychiatric institutions and hospitals, including the use of physical restraints and isolation (arts. 11 and 16).

> **The State party should review the use of physical restraints, consider establishing guidelines on the use of such restraints and limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review. The State party is encouraged to promptly adopt the draft Programme on Improvement of the Mental Health of the Population for 2008-2013.**

**Use of force and ill-treatment**

(16) The Committee expresses its concern at the high number of allegations of use of force and ill-treatment by law enforcement officials, especially in the course of or in relation to apprehension, and the low number of convictions in such cases. The Committee is also concerned that officials accused of torture and ill-treatment seems to be given disciplinary sanctions or warnings and it regrets the lack of a separate account of such disciplinary sanctions (arts. 12 and 16).

> **The State party should take effective measures to send a clear and unambiguous message to all levels of the police force hierarchy that torture, use of force and ill-treatment are unacceptable, including through the enforcement of the 2003 Professional Ethics and Conduct Code of the State Police Personnel, and ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duty. Referring to article 4, paragraph 2 of the Convention, the Committee underlines that the State party should apply sanctions that are proportional with the offences, and the State party is encouraged to initiate the collection of statistics on disciplinary penalties imposed.**

**Prompt and impartial investigations**

(17) The Committee, while noting that several complaints bodies are mandated to review individual complaints about police misconduct, is concerned at the number of complaints of physical use of force and ill-treatment by law enforcement officials, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated. The Committee also notes with concern that the offence of torture, which as such does not exist in the Latvian Criminal Code but rather is punishable under other provisions of the Criminal Code, might in some cases be subject to a statute of limitations. The Committee is of the view that acts of torture cannot be subject to any statute of limitations (arts. 1, 4, 12 and 16).

**The Committee recommends that the State party should:**

> **(a) Strengthen its measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;**
>
> **(b) Try the perpetrators and impose appropriate sentences on those convicted in order to eliminate impunity for law enforcement personnel who are responsible for violations prohibited by the Convention; and**
>
> **(c) Review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture as well as attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.**

### Compensation and rehabilitation

(18) While noting information on treatment and social rehabilitation services provided to, inter alia, detainees and child victims of violence, the Committee regrets the lack of a specific programme to safeguard the rights of victims of torture and ill-treatment. The Committee also regrets the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases as well as the lack of information about other forms of assistance, including medical or psychosocial rehabilitation, provided to these victims (art. 14).

> **The State party should strengthen its efforts in respect of compensation, redress and rehabilitation in order to provide victims with redress and fair and adequate compensation, including the means for as full rehabilitation as possible. The State party should develop a specific programme of assistance in respect of victims of torture and ill-treatment. Furthermore, the State party should provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.**

### Rights of vulnerable groups and discrimination

(19) While noting a number of measures adopted by the State party, including the recent amendment in article 48 of the Criminal Law to include racial motivation as an aggravating factor for criminal liability, the Committee expresses its concern at report of acts of violence against and discrimination of vulnerable groups, including the Roma and the lesbian, gay, bisexual and transgender (LGBT) community. The Committee is concerned at reports that the number of allegedly racially motivated crimes has recently increased and that the number of reported hate crimes is underestimated due to the lack of an effective hate crime recording and monitoring system. Furthermore, while the Committee takes note of the efforts made by the State party in recent years in the process of naturalisation, it remains concerned at the continued existence of the status of non-citizens and stateless persons, affecting a large group in Latvian society (art. 16).

> **The State party should intensify its efforts to combat discrimination against and ill-treatment of vulnerable groups, in particular the Roma and the LGBT community, including through the strict application of relevant legislation and regulations providing for sanctions. The State party should ensure prompt, impartial and thorough investigations into all such motivated acts and prosecute and punish perpetrators with appropriate penalties which take into account the grave nature of their acts and ensure adequate training and instructions for law enforcement bodies and sensitization of the judiciary. The State party is encouraged to adopt the draft National Programme to Facilitate Tolerance and to provide detailed information in its next periodic report on the effective measures adopted to prevent and combat such acts. The State party should simplify and facilitate the naturalization process and integration of non-citizens and stateless persons.**

### Domestic violence

(20) The Committee, while noting various measures undertaken by the State party, including the Action Plan for 2004-2013 of the State Family Policy Document, expresses its concern about the persistence of violence against women and children, including domestic violence. It is also concerned that domestic violence is not defined in national legislation and that marital rape is not recognized as a specific crime. The Committee further regrets the lack of state-wide statistics on domestic violence and to this effect statistical data on complaints, prosecutions and sentences in matters of domestic violence were not provided. While noting the existence of some assistance programmes, including in the areas of rehabilitation and legal assistance, these are mostly run by non-governmental organizations and supported by outside donors, the Committee regrets the lack of direct State involvement in such programmes (arts. 1, 2, 12 and 16).

> **The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence. The State party should, inter alia, include a definition of domestic violence in its Criminal Code and recognize marital rape as a specific crime. The State party is encouraged to participate directly in rehabilitation and legal assistance programmes and to conduct broader awareness campaigns for officials (law-enforcement agencies, judges, law officers and welfare workers) who are in direct contact with the victims. The State party is also encouraged to adopt the draft Programme on Gender Equality for 2007-2010 as announced by the Ministry of Welfare on 26 April 2007 and to elaborate an action plan to prevent sexual and gender-related criminal offences.**

### Trafficking

(21) While recognizing the existence of legislative and other measures to address sexual exploitation and trafficking in women and children, including the State Programme for Elimination of Trafficking in Human Beings (2004-2008), the Committee is concerned about persistent reports of cross-border trafficking in women for sexual and other exploitative purposes. The Committee notes the information provided on social rehabilitation for victims of trafficking, including the provision of state-financed social rehabilitation, but regrets the lack of information on training of law enforcement personnel and other relevant groups (arts. 2, 10 and 16).

> **The State party should continue to take effective measures to prosecute and punish trafficking in persons, including through the strict application of relevant legislation. The State party should conduct nationwide awareness-raising campaigns, provide adequate programmes of assistance, recovery and reintegration for victims of trafficking and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation.**

### Data collection

(22) While noting that some statistics have been provided, the Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, as well as on trafficking and domestic and sexual violence. The Committee also regrets the lack of statistics in respect of asylum seekers and non-citizens as well as inter-prisoner violence. However, the Committee takes note of the establishment in August 2007 by an order of the State Police of the Statistics and Analysis Unit of the Internal Security Bureau of State Police tasked, inter alia, to analyze statistics on the offences committed by the police officers (arts. 12 and 13).

> **The State party should establish an effective system to gather all statistical data relevant to the monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking and domestic and sexual violence, as well as on compensation and rehabilitation provided to the victims. The Committee recognizes the sensitive implications of gathering personal data and emphasizes that appropriate measures should be taken to ensure that such data collection is not abused.**

(23) The Committee encourages the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(24) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party.

(25) The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

(26) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(27) The State party is encouraged to disseminate widely the reports submitted by Latvia to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 8, 11, 17 above.

(29) The State party is invited to submit its next periodic report, which will be considered as the fifth periodic report, by 30 December 2011.

## 35. Norway

(1) The Committee considered the fifth periodic report of Norway (CAT/C/81/Add.4) at its 791st and 794th meetings, held on 12 and 13 November 2007 (CAT/C/SR.791 and 794), and adopted, at its 804th meeting on 20 November 2007 (CAT/C/SR.804), the following conclusions and recommendations.

### A. Introduction

(2) The Committee welcomes the submission of the State party's fifth periodic report, which was prepared in accordance with the Committee's guidelines and submitted on time. The Committee commends the comprehensive written responses provided to the list of issues (CAT/C/NOR/Q/5/Add.1) and appreciates the fruitful and constructive dialogue with the State party's multisectoral delegation.

### B. Positive aspects

(3) The Committee commends the State party for its compliance with its obligations under the Convention and for its ongoing efforts to prevent and eliminate any acts or conduct contrary to its provisions. In particular, the Committee notes with satisfaction:

(a) The incorporation of a new provision in the Penal Code that prohibits and penalizes torture, in conformity with article 1 of the Convention;

(b) The adoption of an amendment to the Criminal Procedure Act to reduce the overall use of pretrial solitary confinement and to strengthen its judicial supervision, as well as the abolition of solitary confinement as a sanction, in accordance with the new Act on Execution of Sentences and its implementing regulations;

(c) The recent adoption of legislative measures to regulate the rights of persons staying at the Trandum Alien Holding Centre in accordance with the revised UNHCR Guidelines on Applicable Criteria and Standards for the Detention of Asylum Seekers;

(d) The establishment of a new central unit for the investigation of alleged crimes by members of the police, with authority to initiate prosecutions, and the allocation of additional resources to the investigation of reports of crime committed by the police;

(e) The measures taken to ensure that the Committee's concluding observations are promptly translated into Norwegian and distributed more widely, including through publication on the website of the Ministry for Foreign Affairs;

(f) The State party's regular donations to the United Nations Voluntary Fund for the Victims of Torture since its establishment; as well as bilateral cooperation and development assistance aimed at the combat of torture.

## C. Principal subjects of concern and recommendations

### Incorporation of the Convention

(4) The Committee, while noting the State party's explanation with regard to its general principles concerning the transformation of its international obligations into national law and the reasons for incorporating only the most general international instruments in its Human Rights Act, nevertheless regrets that the State party has not changed its position with regard to the specific incorporation of the Convention into Norwegian law.

> **The State party should further consider incorporating the Convention into domestic law in order to allow persons to invoke the Convention directly in the courts, to give prominence to the Convention and to raise awareness of the provisions of the Convention among members of the judiciary and the public at large.**

### Definition of torture

(5) The Committee, while noting with appreciation the incorporation of a new provision prohibiting and penalizing torture in the Penal Code, notes that the wording of the definition of torture in the Penal Code, in contrast to the definition in article 1 of the Convention, enumerates specific forms of discrimination as possible motives rather than referring to all types of discrimination.

> **The State party should further consider the possible use of wording similar to that used in the Convention so as to ensure that the definition of torture comprises all types of discrimination as possible motives.**

### Non-refoulement

(6) The Committee notes the existence of a so-called "48-hour procedure" for the rejection of asylum-seekers from countries generally regarded as safe and whose application is assessed as manifestly unfounded after an asylum interview.

> **The State party should ensure that a genuine consideration of each individual case can still be provided for under the "48-hour procedure" and keep under constant review the situation in those countries in respect of which that procedure is applied.**

(7) With regard to the State party's participation in the International Security Assistance Force (ISAF) operation in Afghanistan, the Committee notes the State party's explanation that any Afghan citizen apprehended by Norwegian ISAF personnel is handed over to the Afghan authorities in accordance with a Memorandum of Understanding obliging the Afghan Government to comply with relevant international standards in the treatment of any persons thus transferred.

> **In accordance with the Committee's constant view (see CAT/C/CR/33/3, paras. 4 (b), 4 (d), 5 (e) and 5 (f) and CAT/C/USA/CO/2, paras. 20 and 21) that article 3 of the Convention and its obligation of non-refoulement apply to a State party's military forces, wherever situated, where they exercise effective control over an individual, the State party should continue to closely monitor the compliance by the Afghan authorities with their relevant obligations in relation to the continued detention of any persons handed over by Norwegian military personnel.**

### Pretrial detention and treatment of persons otherwise detained or at the disposal of the authorities

(8) The Committee, while noting the amendment of legislation to reduce the length of pretrial detention and the use of solitary confinement as a preventative measure, remains concerned at the lack of adequate statistics validating the effectiveness of these measures.

**The State party should compile detailed statistics on the application of pretrial detention and the use of solitary confinement so as to verify the effectiveness of recent amendments to its relevant legislation in practice. The State party should also compile statistics relating to the application of recent amendments to the Immigration Act concerning the detention of foreign nationals.**

(9) The Committee, while welcoming the recent adoption of a legislative act to regulate the rights of persons staying at the Trandum Alien Holding Centre, notes that the supervisory board which will supervise the operation of the Centre in accordance with that act has yet to be established.

**The State party should establish the supervisory board for the Trandum Holding Centre envisaged in recent legislation forthwith so as to ensure that the rights of persons held at the Centre are respected at all times.**

(10) The Committee, while noting that measures have been taken to address recent incidents of excessive use of force by the police, remains concerned about reports on the use of unnecessary force in some instances, and about reports of discriminatory treatment based on ethnicity.

**The State party should ensure that all appropriate measures are taken to counter the possible persistence of practices involving the use of unnecessary force by the police, and the risks posed by any discriminatory treatment in this regard.**

**Education on the prohibition against torture**

(11) While noting that different training programmes for police and prison officers which cover human rights and rights of detainees, including the prohibition of torture, are systematically held, the Committee regrets that there is no available information on the impact of the training on reducing incidents of violence and ill-treatment, including incidents that may be racially motivated.

**The State party should ensure that through educational programmes, law enforcement personnel and justice officials are fully aware of the provisions of the Convention, applicable limitations on the use of force and the need to avoid any discriminatory treatment. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of relevant training programmes on the incidence of cases of torture, violence and ill-treatment.**

**Prompt and impartial investigations**

(12) The Committee notes that the State party has taken measures to further improve the handling of complaints against the police and the investigation of relevant allegations. Nevertheless, the Committee remains concerned about allegations concerning violations committed by law enforcement officials, including allegations relating to discriminatory treatment, and about the impartiality of subsequent investigations.

**The State party should closely monitor the effectiveness of the new procedures for the investigation of alleged crimes committed by law enforcement officials, in particular those in which discriminatory treatment based on ethnicity is alleged. The State party is requested to provide detailed information on the results of the ongoing review process in its next periodic report.**

**Provisional measures**

(13) In light of a recent case in which the State party's initial response to a request by the Committee for provisional measures was unfavourable, the Committee is concerned about the State party's general position with regard to requests for provisional measures by the Committee.

**The State party should consider its position with regard to interim measures requested by the Committee in light of article 22 of the Convention and the principle of good faith, with a view to generally allowing the Committee sufficient time to consider any case that may arise in the future before any action is taken.**

(14) The Committee notes the State party's assurance that measures are being undertaken to seek the ratification of the Optional Protocol to the Convention, and encourages the State party to proceed to ratify the Protocol at the earliest possible date.

(15) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party.

(16) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.[1]

(17) The State party is encouraged to disseminate widely the reports submitted to the Committee and the conclusions and recommendations, through official websites, the media and non-governmental organizations.

(18) The Committee requests the State party to provide, within one year, information on its response to the recommendations contained in paragraphs 6, 7, 8 and 9 above.

(19) The Committee, having concluded that during the consideration of the report of the State party, sufficient information was presented to cover the period of delay in submitting the fifth report, decided to request the seventh periodic report by 30 December 2011.

## 36. **Portugal**

(1) The Committee considered the fourth periodic report of Portugal (CAT/C/67/Add.6) at its 795th and 798th meetings, held on 14 and 15 November 2007 (CAT/C/SR.795 and 798), and adopted at its 805th meeting on 21 November 2007 (CAT/C/SR.805) the following conclusions and recommendations.

### A. Introduction

(2) The Committee welcomes the fourth periodic report of Portugal, the exhaustive written replies to the list of issues and the extremely detailed additional oral replies given during the consideration of the report. Lastly, the Committee welcomes the constructive dialogue with the high-level delegation sent by the State party and thanks it for the frank and precise replies to the questions raised (CAT/C/PRT/Q/4/Add.1).

### B. Positive aspects

(3) The Committee commends the State party on its progress in the protection and promotion of human rights since the consideration in 2000 of the third periodic report (CAT/C/44/Add.7).

(4) The Committee welcomes the entry into force of the following legislation:

(a) Act No. 23/2007 of 4 July 2007, according to which foreign nationals may not be deported to a country where they would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment;

(b) Act No. 59/2007 of 4 September 2007 approving the new Penal Code and Act No. 48/2007 of 29 August 2007 approving the new Code of Criminal Procedure;

(c) Act No. 63/2007 of 6 November 2007 approving the restructuring of the National Republican Guard (GNR), as announced by the State party's delegation.

---

[1] The wording of this paragraph reflects the changes contained in CAT/C/NOR/CO/5/Corr.1.

(5) The Committee also welcomes the following measures:

(a) The creation in 2000 of the Inspectorate-General for Justice Services;

(b) The establishment of the Police Code of Ethics approved by resolution No. 37/2002 of the Council of Ministers on 28 February 2002; and

(c) The dissemination of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") through the translation of the United Nations Fact Sheets into Portuguese.

## C. Subjects of concern and recommendations

### Definition of torture

(6) While taking note of the explanations given by the State party delegation that discrimination is illegal under article 240 of the new Penal Code, the Committee is nonetheless concerned that the definition of torture contained in article 243 of the Penal Code does not include discrimination among the motives for acts of torture and, consequently, does not appear to cover every possible motive for torture as defined under article 1 of the Convention.

**The State party should consider making the necessary amendments to article 243 of the Penal Code to include discrimination as a possible motive for acts of torture as defined under article 1 of the Convention.**

### Arrest for identification purposes

(7) While noting that, according to the Portuguese delegation, arrests for identification purposes are exceptional, the Committee regrets such a procedure exists, since it could lead to group arrests being made under certain circumstances. The Committee is concerned that time spent in custody for identification purposes (6 hours maximum) is not deducted from the total period of custody which may follow (48 hours). The Committee is also concerned that Portuguese legislation contains no provision explicitly requiring the Public Prosecutor's Office to order a forensic report in all cases where it has knowledge of the ill-treatment of a person held in custody (art. 2).

**The State party should take adequate measures to:**

**(a) Ensure that all arrests, including arrests for identification purposes, are not targeted at groups of persons but that arrests are made on an individual basis;**

**(b) Guarantee that the time spent in custody for identification purposes (6 hours maximum) is deducted from the total period of custody, if applicable (48 hours); and**

**(c) Include in its legislation a provision explicitly requiring the Public Prosecutor's Office to order a forensic report in all cases where it has knowledge of a situation of ill-treatment of a person held in custody.**

### Pretrial detention

(8) While taking note of the explanations given by the Portuguese delegation, in particular its reference to article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), the Committee is concerned by the State party's definition of pretrial detention which encompasses not only detention of persons awaiting trial but also of persons tried in first instance whose sentence has not yet been confirmed or quashed by a court of appeal. Such language is liable to cause confusion regarding the actual duration of pretrial detention as it is understood by the Committee and the number of detainees awaiting trial (arts. 2 and 16).

**The State party should envisage taking the necessary measures to distinguish pretrial detention from detention of persons who have been tried in a court of first instance and have appealed against their sentence, in order to avoid any confusion which could lead the Committee to believe that the Convention has been violated.**

### Detention incommunicado

(9) While welcoming the fact that detainees can no longer be held incommunicado, totally or relatively, during pretrial detention, the Committee notes that under article 143 (4) of the new Code of Criminal Procedure, in cases of terrorism or violent or highly organized crime, the Public Prosecutor's Office can order that detainees be held totally incommunicado - excepting their access to legal counsel - until such time as they are brought before the courts (art. 2).

**The State party should ensure that detention incommunicado prior to appearance in court in cases of terrorism or organized violence is explicitly and strictly regulated by law and subject to stringent judicial supervision.**

### Universal jurisdiction

(10) While acknowledging with satisfaction that article 5 of the new Penal Code permits the State party to exercise universal jurisdiction in respect of acts of torture committed outside its territory, the Committee notes with concern that such jurisdiction is exercised by the Attorney-General, whose Office, although autonomous, is connected with the Executive branch (art. 5).

**The State party should consider entrusting the exercise of universal jurisdiction in respect of serious violations of international law to an independent tribunal.**

### Prison conditions

(11) The Committee welcomes the reform of prison legislation reported by the Portuguese delegation which is designed to bring the law on the enforcement of sentences into conformity with the European Prison Rules. It also notes the substantial improvement in prison occupancy rates and the efforts made in the area of health care. The Committee remains concerned, however, about reports of continuing violence among inmates, including sexual violence, and about the persistently high number of deaths in detention, largely attributable to HIV/AIDS and suicide. The Committee is also troubled by reports of torture and cruel, inhuman or degrading treatment in penitentiary establishments, for instance the case of Mr. Albino Libânio, who allegedly suffered multiple injuries from a beating in 2003 (arts. 11 and 16).

**The State party should continue its efforts to improve prison conditions, in particular by maintaining an appropriate prison occupancy rate. It should also step up measures aimed at preventing violence among inmates, including sexual violence, and suicide by prisoners.**

**The State party should, furthermore, take the necessary steps to ensure that the physical and psychological integrity of prisoners is respected under all circumstances.**

### Prompt and impartial investigations and redress

(12) The Committee is concerned that article 4 of Act No. 21/2000 of 10 August 2000 does not include torture among the 30 crimes listed in the Act for which the judicial police is solely responsible, since this could impede the initiation of prompt and impartial investigations of alleged cases of torture in the territory of the State party (arts. 12 and 14).

**The State party should take appropriate steps to include torture in the list of crimes for which the judicial police is solely responsible and ensure that a prompt and impartial investigation is initiated in all cases where there are grounds for believing that an act of torture has been committed in any territory under its jurisdiction.**

**It should also ensure that the alleged perpetrators of such acts are brought to justice and, if found guilty, given appropriate sentences and that the victims obtain adequate redress, including the means for their physical and psychological rehabilitation.**

(13) The Committee takes note of the restructuring of the various police forces, including the Public Security Police (PSP) and the National Republican Guard (GNR), and the report that the use of firearms by the GNR during vehicle pursuits has been prohibited since 2005 "except in cases expressly provided for by law" (CAT/C/67/Add.6, para. 117). It is nonetheless concerned by reports of excessive use of force by the police allegedly involving gunshot injuries, threats at gunpoint, abuse of power and, in one case, death (arts. 11, 12 and 14).

**The State party should continue its efforts to raise awareness among the police forces with respect to compliance with the provisions of the Convention by means of ongoing and targeted training. Furthermore, it should ensure that any complaints made against the police forces for acts of torture or cruel, inhuman or degrading treatment are immediately investigated, that the alleged perpetrators are prosecuted and that the victims are given appropriate compensation.**

### Use of "TaserX26" weapons

(14) The Committee is deeply concerned about the recent purchase by the State party of electric "TaserX26" weapons for distribution to the Lisbon Metropolitan Command, the Direct Action Corps, the Special Operations Group and the Personal Security Corps. The Committee is concerned that the use of these weapons causes severe pain constituting a form of torture, and that in some cases it may even cause death, as recent developments have shown (arts. 1 and 16).

**The State party should consider relinquishing the use of electric "TaserX26" weapons, the impact of which on the physical and mental state of targeted persons would appear to violate articles 1 and 16 of the Convention.**

### Domestic violence, particularly against women and children

(15) The Committee is concerned about reports received of numerous cases of domestic violence affecting women and children, as well as a high number of deaths among women due to such violence. Moreover, the Committee is deeply concerned at the Supreme Court decision of 5 April 2006, according to which "moderate corporal punishment of a minor by a duly entitled person for solely appropriate educational purposes is not illegal" in the family context (art. 16).

**The State party should strengthen its efforts to establish a national strategy to prevent and combat domestic violence against women and children. It should take the necessary legislative measures to prohibit corporal punishment of children in the family. The State party should: guarantee that women and children who have been victims of violence have access to complaints mechanisms; punish the perpetrators of these acts in an appropriate manner; and facilitate the physical and psychological rehabilitation of the victims.**

**The State party should also ensure that public law enforcement agents receive ongoing and targeted training on the issue of violence against women and children.**

### Human trafficking, including of residents in Portugal

(16) The Committee notes with satisfaction that, under Act No. 23/2007 of 4 July 2007, victims of human trafficking can obtain residence permits, and welcomes the awareness-raising campaign launched by the State party to combat this problem. The Committee is, nonetheless, concerned about the extent of human trafficking, which affects a very high number of women, for the purposes of economic and sexual exploitation (art. 16).

**The State party should continue its efforts to combat human trafficking and should adopt the necessary measures to punish the perpetrators with appropriate penalties.**

**Discrimination**

(17) The Committee notes that article 240 of the new Penal Code, concerning non-discrimination, now covers not only discrimination based on race, colour, ethnic or national origin and religion, but also discrimination based on sex and sexual orientation. It is nonetheless concerned by reports of numerous acts of violence of a discriminatory nature directed against certain minorities. The Committee is also concerned that the membership of the police forces does not reflect the diversity of minorities present in Portugal (art. 16).

> **The State party should take the necessary measures to effectively combat acts of violence based on any form of discrimination and to punish the perpetrators appropriately. The State party should also strive to include representatives of minorities residing in its territory in the police forces.**

(18) The State party is encouraged to consider ratifying the Optional Protocol to the Convention.

(19) The Committee invites the State party to ratify the major United Nations treaties on human rights to which it is not yet party.

(20) The State party is encouraged to disseminate widely the reports submitted by Portugal to the Committee and the Committee's conclusions and recommendations, in the national language, through official websites, the media and non-governmental organizations. The State party is also encouraged to circulate its reports to national non-governmental human rights organizations before submitting them to the Committee.

(21) The Committee invites the State party to submit its core document in accordance with the requirements concerning the common core document contained in the harmonized guidelines on reporting, adopted by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(22) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations as contained in paragraphs 11 to 14 above.

(23) The Committee, having concluded that, during the consideration of the report of the State party, a sufficient amount of information was adduced to cover the period of the delay in submitting its fourth periodic report, decided to request that the sixth periodic report should be submitted by 30 December 2011.

## 37. **Uzbekistan**

(1) The Committee considered the third periodic report of Uzbekistan (CAT/C/UZB/3) at its 789th and 792nd meetings (CAT/C/SR.789 and 792), held on 9 and 12 October 2007, and adopted, at its 807th and 808th meetings, held on 22 November 2007 (CAT/C/SR.807 and 808), the following conclusions and recommendations.

### A. Introduction

(2) The Committee welcomes the submission of the third periodic report of Uzbekistan and the extensive responses to the list of issues (CAT/C/UZB/Q/3/Add.1) by the State party and the representatives who participated in the oral review.

### B. Positive aspects

(3) The Committee welcomes the following developments, including the following administrative, legislative and other measures taken:

(a) Scheduled introduction of habeas corpus provisions beginning 1 January 2008;

(b) Adoption of the law to abolish the death penalty beginning 1 January 2008;

(c) Amendment to article 235 of the Criminal Code, addressing some of the elements in the definition of torture;

(d) Transfer of the authority to issue arrests warrants from the prosecutor's office to the courts (8 August 2005);

(e) Order No. 40, which instructs prosecutors to apply the provisions under the Convention and applicable national laws directly;

(f) The Supreme Court's directives to prohibit the introduction of evidence, including testimonies, obtained under torture, resulting in courts referring "numerous criminal cases back for further investigation after evidence had been found inadmissible";

(g) Steps to implement the Plan of Action of 9 March 2004 on the adoption of the recommendations of the Committee against Torture (CAT/C/CR/28/7) following consideration of the second periodic report, and the information provided by the delegation of the State party that a similar plan will be adopted to continue efforts to realize the present concluding observations;

(h) Increase in the number of registered complaints of torture to the Ministry of Internal Affairs by 57 per cent, which according to the State party "is a sign of increased confidence in the internal affairs authorities";

(i) Preparation and distribution to all detainees of a pamphlet prepared jointly with the American Bar Association to inform detainees of their rights;

(j) Reduction in crowding of prisoners in places of detention.

(4) The Committee also notes the following:

(a) Ratification of the United Nations Convention against Transnational Organized Crime; and

(b) Ratification of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

## C. Main subjects of concerns and recommendations

### Prosecution of torture as an offence

(5) While the Committee acknowledges the efforts made to amend legislation to incorporate the definition of torture of the Convention into domestic law, it remains concerned that in particular the definition in the amended article 235 of the Criminal Code restricts the prohibited practice of torture to the actions of law enforcement officials and does not cover acts by "other persons acting in an official capacity", including those acts that result from instigation, consent or acquiescence of a public official and as such does not contain all the elements of article 1 of the Convention.

**The Committee reiterates its previous recommendation that the State party take measures to adopt a definition of torture so that all the elements contained in article 1 of the Convention are included. The State party should ensure that persons who are not law enforcement officials but who act in an official capacity or with the consent or acquiescence of a public official can be prosecuted for torture and not merely, as stated, charged with "aiding and abetting" such practices.**

### Widespread torture and ill-treatment

(6) The Committee is concerned about:

(a) Numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings;

(b) Credible reports that such acts commonly occur before formal charges are made, and during pretrial detention, when the detainee is deprived of fundamental safeguards, in particular access to legal counsel. This situation is exacerbated by the reported use of internal regulations which in practice permit procedures contrary to published laws;

(c) The failure to conduct prompt and impartial investigations into such allegations of breaches of the Convention; and

(d) Allegations that persons held as witnesses are also subjected to intimidation and coercive interrogation and in some cases reprisals.

**The State party should apply a zero-tolerance approach to the continuing problem of torture, and to the practice of impunity. The State party should:**

**(a) Publicly and unambiguously condemn practices of torture in all its forms, directing this in particular to police and prison staff, accompanied by a clear warning that any person committing such acts, or otherwise complicit or participating in torture be held personally responsible before the law for such acts and subject to criminal penalties;**

**(b) Immediately adopt measures to ensure in practice prompt, impartial and effective investigations into all allegations of torture and ill-treatment and the prosecution and punishment of those responsible, including law enforcement officials and others. Such investigations should be undertaken by a fully independent body;**

**(c) Bring all suspected perpetrators to justice in order to eliminate impunity for law enforcement officials and others responsible for breaches of the Convention; and**

**(d) Ensure in practice that complainants and witnesses are protected against any ill-treatment or intimidation as a consequence of his/her complaint or any evidence given.**

(7) The Committee is also concerned at the numerous allegations of excessive use of force and ill-treatment by Uzbek military and security forces in the May 2005 events at Andijan which resulted, according to the State party, in 187 deaths and according to other sources, 700 or more, and in hundreds of others being detained thereafter. Notwithstanding the State party's persistent response to all allegations that the measures taken were in fact appropriate, the Committee notes with concern the State party's failure to conduct full and effective investigations into all claims of excessive force by officials.

(8) The Committee is further concerned that the State party has limited and obstructed independent monitoring of human rights in the aftermath of these events, thereby further impairing the ability to obtain a reliable or credible assessment of the reported abuses, including ascertaining information on the whereabouts and reported torture or ill-treatment of persons detained and/or missing.

(9) The Committee has also received credible reports that some persons who sought refuge abroad and were returned to the country have been kept in detention in unknown places and possibly subjected to breaches of the Convention. The Committee notes that the State party has not agreed to requests made to set up an independent international commission of inquiry into these events, as requested by the High Commissioner for Human Rights, endorsed by the Secretary-General and reiterated by the Committee on the Rights of the Child.

**The State party should take effective measures:**

**(a) To institute a full, effective, impartial inquiry into the May 2005 events at Andijan in order to ensure that individuals can lodge complaints and all persons responsible for violations of the Convention are investigated and brought to justice. In accordance with the recommendation of the High Commissioner for Human Rights and others, the Committee recommends that credible, independent experts conduct this inquiry in order to examine all information thoroughly and reach conclusions as to the facts and measures taken;**

**(b) To provide information to family members on the whereabouts and charges against all persons arrested or detained in connection with the Andijan events; and**

**(c) To ensure that military and security officials only use force when strictly necessary and that any acting in violation of the Convention are subject to review.**

(10) The Committee is disappointed that most of the small number of persons whose cases were pursued by the State party received mainly disciplinary penalties. The Committee is also concerned that sentences of those convicted under article 235 of the Criminal Code are not commensurate with the gravity of the offence of torture as required by the Convention.

**The State party should immediately adopt measures to ensure that punishment for acts of torture are at a level commensurate with the severity of the crime, in accordance with the requirements of the Convention. Suspected perpetrators should as a rule be subject to suspension or reassignment during the process of investigation. These subjected to disciplinary penalties should not be permitted to remain at their posts.**

### Conditions of detention

(11) While the Committee appreciates the information from the State party regarding surveys of detainees' opinions regarding detention facilities, the Committee remains concerned that despite the reported improvements, there are numerous reports of abuses in custody and many deaths, some of which are alleged to have followed torture or ill-treatment. Furthermore, only some of these have been followed by independent autopsies, and such investigations have not become a regular practice. The Committee is also aware of the concerns raised by the Special Rapporteur on torture regarding the Jaslyk detention facility, the isolated location of which creates conditions of detention reportedly amounting to cruel, inhuman and degrading treatment or punishment for both its inmates and their relatives.

**The State party should take effective measures to keep under systematic review all places of detention, and not to impede routine unannounced visits by independent experts, including independent national and international bodies, to all places of detention, including Jaslyk prison.**

**The State party should take prompt measures to ensure that in all instances of death in custody, it independently investigates and prosecutes those believed responsible for any deaths resulting from torture, ill-treatment or wilful negligence leading to any of these deaths. The Committee would appreciate a report on the outcome of the investigations, where completed, and where cases of torture were indeed found, as well as information about what penalties and remedies were provided. The State party should correct the reportedly poor conditions of places of detention, including through the application of alternative measures to imprisonment and the establishment of additional prison facilities, as needed.**

### Safeguards for prisoners

(12) Notwithstanding the many fundamental legislative changes made by the State party regarding detention conditions, safeguards of detainees and related matters, the Committee is concerned at credible reports that law enforcement personnel secure and follow detailed internal regulations and procedures that are restricted for official use only and not made public or available to detainees or their lawyers. These rules leave many issues to the discretion of the officials. This results in claims that, in practice, detainees are not afforded the rights of access to a lawyer, independent doctors or family members. The Committee is concerned that these rules create conditions where abusive practices are sanctioned.

**The State party should ensure in practice that every detainee can exercise the right to access to a lawyer, independent doctor and family member and other legal guarantees to ensure protection from torture.**

### Independent monitoring of places of detention

(13) While noting the State party's affirmation that all places of detention are monitored by independent national and international organizations without any restrictions and that they would welcome further inspections including by the International Committee of the Red Cross (ICRC), the Committee remains concerned at information received, indicating that acceptable terms of access to detainees were absent, causing, inter alia, the ICRC to cease prison visits in 2004.

> **The State party should ensure that fully independent monitoring of detention and other custodial facilitates is permitted, including by independent and impartial national and international experts and non-governmental organizations, in accordance with their standard methodologies.**

### Results of investigations

(14) While appreciating the responses by the State party regarding cases raised by the Committee in which violations of the Convention are alleged, the Committee notes with concern that the State party often presents extensive detail on the alleged crimes committed by individuals rather than providing information on the results of investigations into the allegations of torture.

> **The State party is reminded that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.**

### Fully independent complaints mechanism

(15) Notwithstanding the bodies established by the State parties to investigate complaints, such as through instruction 334 of the Ministry of Internal Affairs and special staff inspection units and the Parliamentary Ombudsperson, the Committee is concerned that these bodies have not been effective in combating torture and lack full independence. The Committee expresses concern that despite the State party's report of thousands of cases registered annually about alleged abuses by law enforcement personnel, and the Ombudsperson's visits to places of detention, it was stated that no appeals regarding torture were received and no reason provided. The Committee also notes that the State party should consider making the declarations under articles 21 and 22 of the Convention.

> **The State party should ensure in law and in practice that every person has the right to complain to a fully independent mechanism that will investigate and respond promptly, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The State party is urged to ensure that all procedures for dealing with these complaints are effective and independent and should take the necessary measures to ensure that the Parliamentary Ombudsperson is fully independent, in accordance with the Paris Principles. In addition, the State party should make the necessary declarations under articles 21 and 22 of the Convention.**

### Closure of human rights and other independent organizations

(16) The Committee is concerned at the information received about the intimidation, restrictions and imprisonment of members of human rights monitoring organizations, human rights defenders and other civil society groups, and the closing down of numerous national and international organizations, particularly since May 2005. The Committee appreciates the information that Mutabar Tojibayava is eligible for amnesty, but remains concerned at the reports of ill-treatment and denial of fundamental safeguards regarding her trial and those of other civil society advocates and detainees.

> **The State party should take all necessary measures to ensure that independent human rights monitors are protected from unjust imprisonment, intimidation or violence as a result of their peaceful human rights activities.**

**The Committee urges the State party to release human rights defenders imprisoned and/or sentenced because of their peaceful professional activities and to facilitate the reopening and full functioning of independent national and international human rights organizations, including the possibility of conducting unannounced independent visits to places of detention and confinement.**

### Training of personnel

(17) The Committee takes note of the extensive information provided on training of law enforcement officials and penitentiary staff regarding human rights. The State party's information does not clarify whether this training has been effective. The Committee also notes a lack of information provided on gender specific training.

**The State party should provide specific training to its medical personnel dealing with detainees on how to identify signs of torture and ill-treatment and ensure that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) becomes an integral part of the training provided to physicians and others involved in health care of detainees.**

**In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of its training/educational programmes on cases of torture and ill-treatment and provide information about gender specific trainings.**

### Compensation and rehabilitation

(18) Noting the State party's information about victims' rights to material and moral rehabilitation envisaged in the Criminal Procedure Code and the Civil Code, the Committee is concerned at the lack of examples of cases in which the individual received such compensation, including medical or psychosocial rehabilitation.

**The State party should provide compensation, redress and rehabilitation to victims, including the means for as full rehabilitation as possible and provide such assistance in practice.**

### Independence of the judiciary

(19) The Committee remains concerned that there is a lack of security of tenure of judges, that the designation of Supreme Court judges rests entirely with the Presidency, and that lower level appointments are made by the executive which re-appoints judges every five years.

**The State party should guarantee the full independence and impartiality of the judiciary, inter alia, by guaranteeing judges' security of tenure.**

### Evidence obtained through torture

(20) While appreciating the frank acknowledgement by the representatives of the State party that confessions under torture have been used as a form of evidence in some proceedings, and notwithstanding the Supreme Court's actions to prohibit the admissibility of such evidence, the Committee remains concerned that the principle of non-admissibility of such evidence is not being respected in every instance.

**The State party should take immediate steps to ensure that in practice evidence obtained by torture may not be invoked as evidence in any proceedings. The Committee reiterates its previous recommendation that the State party should review cases of convictions based solely on confessions, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures.**

**Violence against women**

(21) The Committee is concerned by reports of cases of violence against women, including in places of detention and elsewhere, and notes the lack of information about prosecutions of persons in connection with cases of violence against women.

> **The State party should ensure the protection of women in places of detention and elsewhere, and the establishment of clear procedures for complaints as well as mechanisms for monitoring and oversight. The State party should ensure protection of women by adopting specific legislative and other measures to prevent in practice domestic violence in accordance with the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104) and provide for protection of victims, access to medical, social and legal services and temporary accommodation. Perpetrators should also be held accountable.**

(22) The Committee remains concerned at trafficking in women for purposes of sexual exploitation.

> **The State party should adopt and strengthen effective measures to prevent and combat trafficking in women.**

(23) The Committee is concerned about reports about inter-prisoner violence, including sexual violence, in places of detention.

> **The State party should take prompt measures to protect detainees in practice from such inter-prisoner violence. Further, the State party should collect information on such incidents and provide the Committee with its findings and measures taken to prevent, investigate, and prosecute or punish persons found responsible.**

**Non-refoulement**

(24) The Committee is concerned at the allegations received that individuals have not been afforded the full protection provided for by article 3 of the Convention in relation to expulsion, return or deportation from another country. The Committee is particularly concerned at reports of forcible return of recognized refugees and/or asylum-seekers from neighbouring countries and the unknown conditions, treatment and whereabouts since their arrival in the State party, some of whom were extradited from neighbouring countries. Although the State party's representatives stated that there is no longer a need for the United Nations High Commissioner for Refugees to be present in the country, the Committee is concerned that at least 700 recognized refugees are resident in the State party and are in need of protection and resettlement.

> **The State party should adopt a refugee law that complies with the terms of the Convention. The State party should invite the United Nations High Commissioner for Refugees to return and to assist in providing protection and resettlement for the refugee population. It is encouraged to consider becoming party to the 1951 Refugee Convention and its 1967 Optional Protocol.**

**Other ill-treatment**

(25) The Committee reiterates its concern with the delay in transferring the prison system from the Ministry of Internal Affairs to the Ministry of Justice and notes that insufficient explanation was provided.

> **The State party should consider the transfer of the prison system from the Ministry of Internal Affairs to the Ministry of Justice without delay, with the aim of institutionalizing oversight and accountability for executive decisions in the judicial branch of Government.**

(26) While the Committee welcomes the entry into force of the law eliminating the death penalty, it remains concerned about the past practice of the State party resulting in failure to inform families of persons sentenced to death about the time and place of executions and the location of the bodies, which causes them distress.

> **The State party should ensure that relatives of persons sentenced to death are treated in a humane manner to avoid further suffering due to the secrecy surrounding executions and that remedial measures are taken.**

(27) The Committee recommends that the State party consider becoming a party to:

(a) The Optional Protocol to the Convention;

(b) The Rome Statute of the International Criminal Court;

(c) The core United Nations human rights treaties to which it is not yet a party.

### Data Collection

(28) The Committee notes that much information was provided in the State party's report on a number of situations, but that this information was not disaggregated in the way requested by the Committee, thereby hampering the identification of possible patterns of abuse or measures requiring attention.

> **The State party should provide detailed statistical data in its next periodic report, disaggregated by gender, ethnicity or nationality, age, geographical region and type and location of place of deprivation of liberty, on complaints related to cases of torture and other ill-treatment, including those rejected by the courts, as well as related investigations, prosecutions and disciplinary and penal sanctions, and on the compensation and rehabilitation provided to the victims.**

(29) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(30) The State party is encouraged to disseminate widely the reports it submitted to the Committee, its replies to the list of issues, the summary records of meetings and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

(31) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 6, 7, 9, 10, 11 and 14 above.

(32) The State party is invited to submit its next periodic report, which will be the fourth report, by 30 December 2011.

## 38. **Algeria**

(1) The Committee considered the third periodic report of Algeria (CAT/C/DZA/3) at its 815th and 818th meetings, held on 2 and 5 May 2008 (CAT/C/SR.815 and 818), and adopted the following concluding observations at its 827th and 828th meetings, held on 13 May 2008 (CAT/C/SR.827 and 828).

### A. Introduction

(2) The Committee welcomes the third periodic report of Algeria, the written replies (CAT/C/DZA/Q/3/Add.1) to the list of issues (CAT/C/DZA/Q/3) and the additional information provided during the discussion of the report, while regretting the eight-year delay in its submission. The Committee also welcomes the resumption of constructive dialogue with the high-level delegation sent by the State party, and is grateful for the exhaustive replies to the questions raised.

## B. Positive aspects

(3) The Committee notes with satisfaction:

(a) The provisions included in the amendments to the Criminal Code, articles 263 bis, ter and quater, making torture a criminal offence;

(b) The publication of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention") in the Official Gazette of the People's Democratic Republic of Algeria, No. 11, of 26 February 1997;

(c) The State party's signing of the International Convention for the Protection of All Persons from Enforced Disappearance on 2 February 2007;

(d) The moratorium on the death penalty in force in the State party since 1993;

(e) The fact that the State party does not engage in the practice of seeking diplomatic assurances from a third State to which it plans to extradite, return or expel an individual;

(f) The commitment to national reconciliation expressed by the State party, as well as its stated intention to continue to better promote and protect human rights.

## C. Subjects of concern and recommendations

### Definition of terrorism and state of emergency

(4) The Committee expresses its concern about the rather vague definition of terrorism set out in article 87 bis of the Criminal Code, although it understands that the State party has gone to some lengths to protect its national security and its citizens from the threats posed by terrorist acts. The Committee is concerned that this definition could extend to acts which may be unrelated to terrorism and lay the persons thereby arrested open to actions which could violate the Convention. Furthermore, the Committee is also concerned that the state of emergency declared in 1992 has been extended, despite information provided by the State party itself showing significant improvement in the security situation. The extension of the state of emergency is reflected by the continuing delegation of judicial police functions to officials of the Intelligence and Security Department, who have reportedly been behind numerous cases of torture and cruel, inhuman and degrading treatment committed in the territory of the State party (art. 2).

**The State party should make sure that counter-terrorism measures are consistent with the commitments undertaken by Algeria under the Convention. The State party should also ensure the strict implementation of the Convention, particularly article 2, paragraph 2, which stipulates that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. In addition, the definition of terrorist and subversive acts should not give rise to interpretations whereby the legitimate expression of the rights established under the Covenant on Civil and Political Rights can be sanctioned as a terrorist act. The State party should also review the need for extending the state of emergency in the light of the criteria laid down in article 4 of the Covenant, to which Algeria is a party.**

### Basic safeguards for detainees

(5) While noting the amendments made to the Code of Criminal Procedure, the Committee remains concerned about reports that the maximum period of remand in custody (up to 12 days) can, in practice, be extended repeatedly. The Committee further notes with concern that the law does not guarantee the right to counsel during the period of remand in custody, and that the right of a person in custody to have access to a doctor and to communicate with his or her family is not always respected (art. 2).

**The State party should ensure that the maximum period of remand in custody is respected in practice and take the necessary steps so that the right of persons remanded in custody to have access to counsel as soon as they are arrested is guaranteed by the Code of Criminal Procedure and strictly enforced.**

**In addition, the State party should ensure that the right of any detainee to have access to a doctor and to communicate with his or her family, in accordance with article 51 of the Code of Criminal Procedure, is respected in practice. The State party should also establish a national register of prisoners, including persons detained in institutions run by the Intelligence and Security Department.**

**Lastly, insofar as the State party indicated that the judicial police, under the supervision of the prosecutor's office, has introduced a procedure for recording on video the interrogation of persons suspected of terrorism, it should also ensure that such recordings are made available to the defence attorneys.**

**Secret detention centres**

(6) The Committee takes note of the State party's assurances that Intelligence and Security Department officers are placed under the control of the Public Prosecutor's Office, and that secure detention centres no longer exist as of November 1996. The Committee nevertheless remains concerned about reports of the existence of secret detention centres run by the Department in its military barracks in Antar, in the Hydra district of Algiers, which are outside the control of the courts. The Committee is also concerned about the lack of information showing that the competent judicial authority has taken steps to look into these allegations (arts. 2 and 11).

**The State party should ensure that all places of detention, including those run by the Intelligence and Security Department, are immediately placed under the control of the civilian prison administration and the prosecutor's office. It should also ensure that the competent judicial authority takes the necessary steps to look into the allegations concerning the existence of secret detention centres run by the Department.**

**Juvenile detainees**

(7) The Committee expresses its concern over the fact that minors aged 16 may be found criminally responsible and detained in the context of counter-terrorism efforts. The Committee is also concerned about information received that juvenile detainees are not separated from adults (arts. 2 and 11).

**The State party should consider raising the minimum age of criminal responsibility in terrorism cases so that it is consistent with generally accepted international standards on the matter. The State party should also ensure that minors receive age-appropriate treatment in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The State party should also guarantee that juvenile detainees are separated from adults.**

**Independence of the National Advisory Commission for the Promotion and Protection of Human Rights**

(8) While noting with satisfaction the establishment of the National Advisory Commission for the Promotion and Protection of Human Rights on 9 October 2001, the Committee remains concerned about the lack of available information on the work of the Commission. The Committee is also concerned that the members are appointed by Presidential decree and that, according to information provided by the Algerian delegation, the President decides whether to follow up on the recommendations of the Commission, including the publication of its report, which is an obstacle to the transparency needed for it to run smoothly and independently (art. 2).

**The State party should ensure that the annual reports on the work of the National Advisory Commission for the Promotion and Protection of Human Rights are made public and widely distributed. The State party should strengthen the independence of the Commission in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles) and enhance its role in monitoring national and international obligations undertaken by Algeria for the protection of human rights, including strict enforcement of the provisions of the Convention.**

**Non-refoulement and collective expulsion**

(9) The Committee is concerned about allegations received of collective expulsions of migrants in violation of their basic right to have their case reviewed individually and to appeal against the expulsion decision. The Committee is also concerned that some persons might be expelled to States where they risk being subjected to torture (art. 3).

> **The State party should fully implement the provisions of article 3 of the Convention and ensure that the persons under its jurisdiction have their cases duly considered by the competent authorities and receive fair treatment during all stages of the procedure, including the opportunity to request an effective, independent and impartial review of the relevant expulsion or removal decisions, and to exercise the right of appeal.**
>
> **In this respect, the State party should ensure that before the authorities responsible for overseeing foreign nationals take a decision to expel a foreign national who has entered or is residing illegally in Algeria, they conduct a thorough review of the situation in all cases to ensure that the person concerned would not be subjected to torture or inhuman or degrading treatment in the country to which he or she could be sent.**

**Training of law enforcement personnel**

(10) While taking note of the information provided by the delegation of the State party concerning its efforts to provide human rights training for law enforcement personnel, the Committee nevertheless remains concerned at the many serious allegations which it has received of cases of torture and abuse inflicted on detainees by law enforcement officers, including officers of the Intelligence and Security Department (art. 10).

> **The State party should step up its efforts to provide education and training on the prohibition against torture, especially among Intelligence and Security Department officials, and establish evaluation and monitoring mechanisms to measure the results.**

**Impunity of members of armed groups and State officials**

(11) The Committee takes note of the fact that order No. 06-01 establishing the Charter for Peace and National Reconciliation provides for an amnesty for members of armed groups and State officials. The Committee notes that members of armed groups who have given themselves up to the authorities will not be prosecuted or will be given a reduced sentence as long as they have committed no mass killings, bomb attacks or rapes (chap. 2). The Committee reminds the State party that prosecution may not be waived under any circumstances for other international crimes such as torture or enforced disappearance. The Committee also notes, with respect to State officials, that article 45 of the order specifies that "no proceedings may be instituted individually or collectively against any of the components of the defence and security forces of the Republic for actions taken to protect persons and property, safeguard the nation and preserve the institutions of the Republic of Algeria", without excepting international crimes such as torture or enforced disappearance. These provisions are not consistent with the obligation of every State party to conduct an impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, to prosecute the perpetrators of such acts and to compensate the victims (arts. 12, 13 and 14).

> **The State party should amend order No. 06-01, article 45, chapter 2, to specify that waivers of prosecution do not apply under any circumstances to crimes such as torture, including rape, and enforced disappearance, which are crimes to which the statute of limitations does not apply. The State party should immediately take all necessary steps to guarantee that past or recent cases of torture, including cases of rape, and enforced disappearance, are investigated systematically and impartially, the perpetrators of such acts are prosecuted and punished in a manner commensurate with the gravity of the acts committed and the victims are adequately compensated. To that end, the Committee draws the attention of the State party to paragraph 5 of its general comment No. 2 (2007), in which it expressed the view that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.**

**Missing persons**

(12) The Committee notes the acknowledgement by the State party of the enforced disappearance of thousands of persons in Algeria since the start of the 1990s. It also notes that the figures put forward by the Government concerning persons who have disappeared since the 1990s range from 4,000 to 7,000. The Committee expresses its concern that despite these facts the competent judicial authorities have not initiated proceedings to investigate the fate of missing persons and to identify, prosecute and punish the perpetrators of enforced disappearances. This constitutes a violation of articles 12, 13 and 14 of the Convention. The Committee is also concerned that the report of the ad hoc National Commission on Missing Persons has not been made public to date. The publication of these facts would enable anyone with information which could help to locate the missing persons to communicate it to the competent authorities (arts. 12, 13 and 14).

> **The competent judicial authorities have the responsibility to launch investigations spontaneously without requiring individual complaints to be registered in order to shed light on the fate of missing persons, identify, prosecute and punish the perpetrators of acts of enforced disappearance and adequately compensate the families of missing persons. The State party should make a commitment to investigate every case of enforced disappearance and communicate the results of investigations to the families of missing persons, including by immediately making public the final report of the ad hoc National Commission on Missing Persons.**
>
> **The Committee also considers that the publication of the names of missing persons registered since 1990 could be very useful during the gathering of information from persons who could provide facts to help move the investigation forward. The Committee also hopes that the State party will submit to it as soon as possible the list of missing persons registered since the 1990s.**

(13) The Committee expresses its concern over the provisions of order No. 06-01 implementing the Charter for Peace and National Reconciliation which require the families of missing persons to certify the death of the family member in order to receive compensation, which could constitute a form of inhuman and degrading treatment for such persons by laying them open to additional victimization. The Committee is concerned that the criteria established for compensating the families of missing persons have not been made public (art. 14).

> **The State party should abolish the rule obliging families to certify the death of the missing person in order to receive compensation. The Committee reminds the State party that the enforced or involuntary disappearance of persons may constitute inhuman treatment for the members of families of missing persons. The State party should also guarantee the right of such families to seek redress or be fairly and adequately compensated, including by giving them the necessary psychological, social and financial support so that they may make the fullest possible readjustment. The Committee hopes that the State party will communicate to it as soon as possible the criteria for compensating the families of missing persons.**

**Impartial investigation**

(14) While noting the explanations of the Algerian delegation concerning the death of Mounir Hammouche in police custody and the autopsy report which concluded that he committed suicide, the Committee remains concerned at information that the family of the deceased did not have access to the autopsy report. According to information received by the Committee, the family also noted that the body bore signs of a head wound and bruises on the hands and feet (art. 12).

> **The State party should launch prompt and impartial investigations spontaneously and systematically wherever there is reasonable ground to believe that an act of torture has been committed, including in the event of the death of a detainee. The State party should also ensure that the results of the investigation are communicated to the families of the victims.**

### Violence against women

(15) The Committee expresses its concern at reports of several thousand cases of rape of women by members of the armed groups during the internal conflict in the State party. The Committee is also concerned about the lack of investigations, prosecutions and punishment of members of armed groups in rape cases and the lack of compensation and medical, psychological and social rehabilitation of the victims of such acts (arts. 12 and 14).

**The State party should ensure that the identified perpetrators of sexual violence are prosecuted and duly punished. It should also appoint an independent commission to investigate acts of sexual violence committed during the internal conflict and make the results of the investigation public. The State party should also ensure that all the victims of sexual violence committed during the internal conflict receive prompt and adequate compensation and medical, psychological and social rehabilitation. These recommendations are consistent with those contained in the report which the Special Rapporteur on violence against women, its causes and consequences, presented to the Human Rights Council (A/HRC/7/6/Add.2).**

### Acts of mob violence

(16) The Committee is concerned about information received concerning many acts of mob violence against religious minorities and persons who are lawfully seeking alternative modes of expression and behaviour. The Committee is alarmed, among other things, about information concerning repeated acts of violence and collective rapes suffered by women, including single women, suspected of prostitution by their neighbours, particularly in Hassi Messaoud and Tebessa. The Committee is also concerned about the State party's inability to conduct an investigation to prosecute the perpetrators of such acts (arts. 12 and 16).

**The State party should ensure that all necessary steps are taken to investigate cases of mob violence, particularly collective violence targeting religious minorities and people who are seeking alternative modes of expression and behaviour, in order to prosecute and punish the perpetrators of such acts of violence.**

### Right to an effective remedy

(17) While noting the assurances given by the Algerian delegation that article 46 of order No. 06-01 implementing the Charter for Peace and National Reconciliation does not constitute an obstacle to exercise of the right to an effective remedy, the Committee nevertheless remains concerned that this provision specifies imprisonment for three to five years and a fine for anyone who undermines the institutions of the State party, insults the honour of its officials or sullies the image of the State party at the international level. The Committee is concerned that this provision could restrict the right of any person who claims to have been subjected to torture in the territory of the State party to file a complaint before the competent judicial authorities or to refer the matter to the Committee in accordance with article 22 of the Convention (art. 13).

**The State party should amend article 46 of order No. 06-01 implementing the Charter for Peace and National Reconciliation in order to guarantee to any person who claims to have been subjected to torture the right to an effective remedy at both the national and international level, in accordance with article 13 of the Convention. The State party should also inform the public of its right to refer cases to the Committee under article 22 of the Convention.**

### Use of confessions in legal proceedings

(18) While noting the Algerian delegation's assurances that confessions are used only for information purposes in legal proceedings, in accordance with article 215 of the Code of Criminal Procedure, the Committee remains concerned about the lack of a provision in the State party's legislation clearly specifying that any statement that is proved to have been obtained as a result of torture may not be cited as evidence in any proceedings, in accordance with article 15 of the Convention. In addition, the Committee is concerned that article 213 of the Code of Criminal Procedure specifies that, "as with any evidence, the evaluation of confessions is a matter for the judge", as well as information received that confessions obtained as a result of torture have been admitted in legal proceedings (art. 15).

**The State party should amend its Code of Criminal Procedure to make it fully consistent with article 15 of the Convention. The State party should also provide the Committee with information on the number of cases where confessions made under torture, duress or threat have not been admitted as evidence.**

### Corporal punishment and violence within the family

(19) While noting with satisfaction that corporal punishment against children is forbidden in school, the Committee remains concerned about the lack of any provision in the legislation of the State party prohibiting the use of this practice within the family. The Committee also notes with concern the lack of any provision in its domestic legislation prohibiting domestic violence against women (art. 16).

**The State party should incorporate into its domestic legislation a provision prohibiting the use of corporal punishment against children within the family and domestic violence against women.**

(20) The Committee strongly encourages the State party to collaborate with the United Nations Human Rights Council special procedures and grant permission for a visit by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, while fully respecting the mandates of the fact-finding missions sent under the United Nations special procedures.

(21) The Committee calls on the State party to ratify the principal United Nations human rights agreements to which it is not yet a party, including the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

(22) The State party is invited to ratify the Optional Protocol to the Convention as soon as possible and to establish a national mechanism responsible for conducting periodic visits in all places of detention in order to prevent torture or any other cruel, inhuman or degrading treatment.

(23) The State party is encouraged to ratify the Rome Statute of the International Criminal Court.

(24) The State party is urged to widely disseminate the reports submitted by Algeria to the Committee, as well as the Committee's conclusions and recommendations, in the national languages through official websites, the media and non-governmental organizations. The State party is also encouraged to distribute its reports to national human rights non-governmental organizations before submitting them to the Committee.

(25) The Committee invites the State party to submit its core document in accordance with the requirements concerning the common core document set out in the harmonized reporting guidelines adopted by international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(26) The Committee requests the State party to provide it, within a year, with information on action it has taken to follow up the recommendations of the Committee included in paragraphs 4, 6, 12 and 15 above.

(27) The State party should submit its fourth periodic report to the Committee no later than 20 June 2012.

## 39. **Australia**

(1) The Committee considered the third periodic report of Australia (CAT/C/67/Add.7) at its 812th and 815th meetings (CAT/C/SR.812 and 815) held on 29 and 30 May 2008, and adopted, at its 828th meeting (CAT/C/SR.828), the following concluding observations.

### A. Introduction

(2) The Committee welcomes the submission of the third periodic report of Australia as well as the detailed and thorough replies to the list of issues and the addendum, which provided additional information on the legislative, administrative, judicial and other measures taken by the State party for the implementation of the Convention. The Committee also notes with satisfaction the constructive dialogue held with a competent and multisectoral delegation.

(3) The Committee notes with satisfaction that the State party has submitted its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting under international human rights treaties.

### B. Positive aspects

(4) The Committee notes with appreciation the legislative amendments adopted in 2005 related to the immigration detention. In particular, the Committee welcomes:

(a) The changes in law and in practice with respect to children in immigration detention;

(b) The closure of the offshore processing centres in Nauru and Papua New Guinea and the decision to end the so-called Pacific Strategy;

(5) The Committee welcomes the Government's apology to the Aboriginal and Torres Strait Islander peoples for past policies and laws which resulted in the removal of children from their families and communities.

(6) The Committee notes with appreciation the State party's commitment to become a party to the Optional Protocol to the Convention.

(7) The Committee welcomes the State party's ratification of the Rome Statute of the International Criminal Court on 1 July 2002.

### C. Main issues of concerns and recommendations

#### Article 1

(8) The Committee, while noting that the Australian Government is considering the enactment in Commonwealth law of a specific offence of torture which would have extraterritorial application, is concerned that the State party does not have an offence of torture at the Federal level and that there are gaps in the criminalization of torture in certain States and Territories (arts. 1 and 4).

> **The State party should ensure that torture is adequately defined and specifically criminalized both at the Federal and States/Territories levels, in accordance with article 1 of the Convention.**

#### Article 2

(9) The Committee is concerned that the Convention has been only partially incorporated into Federal law and noted that the State party does not have a constitutional or legislative protection of human rights at the Federal level, i.e. a Federal Bill or Charter of Rights protecting, inter alia, the rights contained in the Convention.

> **The State party should fully incorporate the Convention into domestic law, including by speeding up the process to enact a specific offence of torture at the Federal level. The State party should continue consultations with regard to the adoption of a Bill of Rights to ensure a comprehensive constitutional protection of basic human rights at the Federal level.**

(10) The Committee, while noting that there are a number of legislative and procedural safeguards ensuring that individuals are treated in accordance with their rights, is nonetheless concerned about the following issues related to the State party's anti-terrorism laws and practice:

(a) The increased powers provided to the Australian Security Intelligence Organization (ASIO), including the possibility of detaining a person for renewable periods of seven days for questioning, which pose some difficulties especially due to the lack of a right to a lawyer of choice to be present during the questioning and of the right to seek a judicial review of the validity of the detention;

(b) The lack of judicial review and the character of secrecy surrounding imposition of preventative detention and control orders, introduced by the Anti-Terrorism Act (No. 2) 2005;

(c) Reports concerning the harsh conditions of detention of unconvicted remand prisoners charged with terrorism-related offences, also taking into account their status of accused (and not convicted) persons.

**The State party should:**

**(a) Ensure that the increased powers of detention of ASIO are in compliance with the right to a fair trail and the right to take proceedings before a court to determine the lawfulness of the detention;**

**(b) Guarantee that both preventative detention and control orders are imposed in a manner that is consistent with the State party's human rights obligations, including the right to a fair trial including procedural guarantees;**

**(c) Ensure that accused remand prisoners are separated from convicted persons and are subject to separate treatment appropriate to their status as unconvicted persons.**

(11) The Committee is concerned at the mandatory detention policy for those persons who enter irregularly the State party's territory. In this respect, the Committee is especially concerned at the situation of stateless persons in immigration detention who cannot be removed to any country and risk being potentially detained "ad infinitum".

**The State party should:**

**(a) Consider abolishing its policy of mandatory immigration detention for those entering irregularly the State party's territory. Detention should be used as a measure of last resort only and a reasonable time limit for detention should be set; furthermore, non custodial measures and alternatives to detention should be made available to persons in immigration detention;**

**(b) Take urgent measures to avoid the indefinite character of detention of stateless persons.**

(12) The Committee welcomes information from the State party indicating the recent end of the policy of transferring asylum-seekers to offshore processing centres. Yet the Committee notes that "excised" offshore locations, notably Christmas Island, are still used for the detention of asylum-seekers who are subsequently denied the possibility of applying for a visa, except if the Minister exercises discretionary power.

**The State party should end the use of "excised" offshore locations for visa processing purposes in order allow all asylum-seekers an equal opportunity to apply for a visa.**

(13) The Committee notes that the provision of a medical practitioner of the arrested person's choice is not a statutory right, but rather a duty of care requirement for Australian Federal Police members undertaking custodial duties.

**The State party should ensure the right to appoint a fully independent medical practitioner, preferably of the arrested person's choice.**

(14) The Committee notes with appreciation the work of the Human Rights and Equal Opportunities Commission (HREOC) to protect and promote human rights in the State party, but regrets that:

(a) While HREOC is empowered to investigate complaints related to torture and other cruel, inhuman or degrading treatment arising from the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, the Convention against Torture is not included in HREOC's complaint handling jurisdiction;

(b) HREOC can only make recommendations of an advisory nature;

(c) HREOC's complaint handling powers do not extend to investigating the acts and practices of intelligence agencies.

**The State party should consider strengthening and extending the mandate of the HREOC, inter alia, to the handling of complaints for violation of the Convention against Torture, including for acts committed by intelligence agencies officers. Furthermore, the Committee urges the State party to give adequate follow-up to the recommendations of HREOC.**

### Article 3

(15) The Committee is concerned that the prohibition of non-refoulement is not enshrined in the State party's legislation as an express and non-derogable provision, which may also result in practices contrary to the Convention. The Committee also notes with concern that some flaws related to the non-refoulement obligations under the Convention may depend on the exclusive use of the Minister's discretionary powers thereto. In this respect, the Committee welcomes the information that the same Minister for Immigration and Citizenship has indicated that the high degree of discretionary authority available to him under existing legislation should be reconsidered.

**The State party should explicitly incorporate into domestic legislation, both at Federal and States/Territories levels the prohibition whereby no State party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture (non-refoulement), and implement it in practice. The State party should also implement the Committee's previous recommendations formulated during the consideration of the State party's second periodic report to adopt a system of complementary protection ensuring that the State party no longer solely relies on the Minister's discretionary powers to meet its non-refoulement obligations under the Convention.**

(16) The Committee reminds States parties that under no circumstances can they resort to diplomatic assurances as a safeguard against torture or ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return.

**The State party, if resorting to diplomatic assurances in any other situation than those that must be excluded by article 3 of the Convention, should provide the Committee with information in its next report on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees have occurred since 11 September 2001; the State party's minimum requirements for such assurances or guarantees; the measures of subsequent monitoring it has undertaken in such cases as well as the legal enforceability of the assurances or guarantees given.**

(17) The Committee notes that section 198 (6) of the Migration Act provides that a person in immigration detention must be removed from Australia as soon as reasonably practicable. In this respect, while noting that the current policy of the Department of Immigration and Citizenship (DIAC) is that a protection visa applicant in immigration detention will not be removed from Australia pending the outcome of the judicial review or the Ministerial Intervention request in relation to the application, the Committee is concerned that appeals filed against a decision not to grant asylum or to deny or cancel a visa do not seem to have automatic suspensive effect.

**The State party should ensure that effective remedies are available to challenge the decision not to grant asylum or to deny or cancel a visa. Such remedies should have the effect of suspending the execution of the above decision, i.e. the expulsion or removal.**

### Article 4

(18) The Committee, underlining that the conditions that give rise to cruel, inhuman or degrading treatment or punishment frequently facilitate torture and that, therefore, the measures required to prevent torture must be applied to prevent cruel, inhuman or degrading treatment or punishment, believes that the prohibition of ill-treatment has likewise non-derogable nature under the Convention. In this respect, the Committee notes with concern that the Crimes (Torture) Act 1988 does not contain a provision criminalizing cruel, inhuman or degrading treatment (arts. 4 and 16).

> **The State party should introduce a specific offence covering the acts included in article 16 of the Convention; this offence could be also introduced in the State party's legislation in the context of the possible new offence of torture to be included at the Federal level.**

### Article 5

(19) The Committee is concerned that the State party might have failed to establish its jurisdiction in some cases where Australian nationals have been victims of acts of torture abroad.

> **The State party should consider establishing its jurisdiction over the offences referred to in article 4 of the Convention in all cases listed in article 5 of the Convention, including when the victim is a national of the State party.**

### Articles 3, 6, 7, 8 and 9

(20) The Committee is concerned that under the Mutual Assistance in Criminal Matters Act it is not mandatory (representing only discretionary power) to refuse extradition when there are substantial grounds to believe that this extradition may be in breach of the persons' rights under the Convention.

> **The State party should ensure that extradition is refused in all cases where extradition would be towards a State where there are substantial grounds to believe that the person would be in danger of being subjected to torture.**

### Article 10

(21) The Committee notes the State party's reply indicating that all law enforcement and military personnel, including contractors, are provided with training on their obligations under the Convention against Torture prior to overseas deployment, but is concerned that this training is not systematic.

> **The State party should ensure that education and training of all law enforcement or military personnel, including contractors, are conducted on a regular basis, in particular for personnel deployed overseas. This should include training on interrogation rules, instructions and methods, and specific training on how to identify signs of torture and cruel, inhuman or degrading treatment. Such personnel should also be instructed to report such incidents.**
>
> **The State party should also regularly evaluate the training provided to its law enforcement and military personnel and contractors, as well as ensure regular and independent monitoring of their conduct.**

(22) The Committee notes that training on human rights obligations is provided for immigration officials and personnel employed at immigration detention centres; however it is concerned over reports that such training is inadequate.

> **The State party should ensure that education and training of all immigration officials and personnel, including health service providers, employed at immigration detention centres, are conducted on a regular basis. The State party should also regularly evaluate the training provided.**

## Article 11

(23) The Committee is concerned about the arrangements for the custody of persons deprived of their liberty. In particular, the Committee notes with concern:

(a) Overcrowding in prisons, in particular in Western Australia;

(b) The insufficient provision of mental health care in prisons and reports indicating that mentally ill inmates are subjected to extensive use of solitary confinement and subsequent increased risks of suicide attempts;

(c) The disproportionately high numbers of indigenous Australians incarcerated, notably among them the increasingly high rates of children and women;

(d) The continued reports of indigenous deaths in custody due to causes that are not clearly determined.

**In order to improve the arrangements for the custody of persons deprived of their liberty, the State party should:**

**(a) Undertake measures to reduce overcrowding, including consideration of non-custodial forms of detention, and in the case of children in conflict with the law ensure that detention is only used as a measure of last resort;**

**(b) Provide adequate mental health care for all persons deprived of their liberty;**

**(c) Abolish mandatory sentencing due to its disproportionate and discriminatory impact on the indigenous population;**

**(d) Seek to prevent and investigate any deaths in custody promptly. Furthermore, the State party should continue implementation of pending recommendations from the Royal Commission into Aboriginal Deaths in Custody of 1991.**

(24) The Committee is concerned over the harsh regime imposed on detainees in "super-maximum prisons". In particular, the Committee is concerned about the prolonged isolation periods to which detainees, including those pending trial, are subjected and the effect such treatment may have on their mental health.

**The State party should review the regime imposed on detainees in "super-maximum prisons", in particular the practice of prolonged isolation.**

(25) The Committee welcomes the amendment to the Migration Act in 2005 and the commitment of the new Government that children will no longer be housed in immigration detention centres under any circumstances. However, the Committee regrets that children may still be kept in alternative forms of detention and that during the reporting period a considerable number of children spent long periods of time in detention centres. Furthermore the Committee is concerned about the inadequate mental health care for detained asylum-seekers.

**The State party should:**

**(a) Abide by the commitment that children no longer be held in immigration detention centres under any circumstances. Furthermore, it should ensure that any kind of detention of children is always used as a measure of last resort and for a minimum period of time;**

**(b) As a matter of priority, ensure that asylum seekers who have been detained are provided with adequate physical and mental health care, including routine assessments.**

(26) The Committee notes, as a positive step, the mention of human rights obligations in the Immigration Detention Standards, yet notes that they are not legally binding and lack the provision of an independent monitoring mechanism.

**With the objective of improving protection of asylum-seekers, the State party should ensure that the Immigration Detention Standards be codified into legislation and provide for an independent monitoring mechanism.**

### Articles 12, 13 and 14

(27) The Committee is concerned about allegations against law enforcement personnel in respect of acts of torture and other cruel, inhuman or degrading treatment or punishment and notes a lack of investigations and prosecutions.

**The State party should ensure that all allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement officials, and in particular any deaths in detention, are investigated promptly, independently and impartially and, if necessary, prosecuted and sanctioned. Furthermore, the State party should also ensure the right of victims of police misconduct to obtain redress and fair and adequate compensation, as provided for in article 14 of the Convention.**

(28) The Committee is concerned about information indicating that Australian defence officials who were advising the Coalition Provisional Authority had knowledge of abuses committed in Abu Ghraib in 2003, yet did not call for prompt and impartial investigations.

**The State party should call for prompt and impartial investigations, including if appropriate, a public inquiry, should it receive information indicating that there are reasonable grounds to believe that acts of torture have been committed in a jurisdiction where it advises or has advised on the exercise of interim authority.**

(29) The Committee, while noting the significant efforts undertaken by the State party to provide rehabilitation services to refugees who have suffered torture, regrets that certain victims, such as those on bridging visas, are not guaranteed equal access to these services.

**The State party should extend the right to rehabilitation services to all victims of torture, including those on bridging visas, and ensure that there is effective access to such services in all States and Territories.**

### Article 15

(30) The Committee is concerned that the State party lacks uniform legislation to exclude admission of evidence made as a result of torture. Furthermore, the Committee is concerned over reports indicating that confessional evidence obtained under ill-treatment in other countries has been used in criminal proceedings in Australia.

**The State party shall ensure compliance with article 15 of the Convention by the application of uniform and precise legislation in all States and Territories excluding the admission of statements as evidence if made as a result of torture.**

### Article 16

(31) The Committee notes that corporal punishment of children is not explicitly prohibited in all States and Territories and may still be applied as "reasonable chastisement".

**The State party should adopt and implement legislation banning** corporal punishment **at home and in public and private schools, detention centres, and all alternative care settings in all States and Territories.**

(32) The Committee recognizes the efforts undertaken at the Federal level to combat human trafficking, yet notes the low level of prosecutions and is concerned over the lack of measures undertaken by the States and Territories. While noting the establishment of recovery programmes for trafficking victims, the Committee regrets that access is restricted to victims who collaborate with investigations.

**The State party should take effective measures to prosecute and punish trafficking in persons and provide recovery services to victims on a needs basis, unrelated to whether they collaborate with investigations.**

(33) The Committee, while noting efforts to criminalize female genital mutilation at the State and Territory level, remains concerned over the absence of a Federal provision and the overall lack of investigations and prosecutions.

**The State party should ensure that the prohibition of female genital mutilation is introduced into the Federal Criminal Code. The State party should also increase prevention measures and detection and investigation efforts, as well as, prosecutions as appropriate.**

(34) The Committee encourages the State party to speedily conclude its internal consultation and ratify the Optional Protocol to the Convention in order to strengthen the prevention against torture.

(35) The Committee notes with appreciation the State party's previous contributions to the United Nations Voluntary Fund for Victims of Torture and encourages it to resume its support.

(36) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions. The report should also include statistics on pretrial detainees and convicted prisoners, disaggregated by crime, ethnicity, age and sex. Information is further requested on compensation and rehabilitation provided to the victims.

(37) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 9, 10, 11 and 25 above.

(38) The State party is encouraged to disseminate widely the reports submitted to the Committee and the concluding observations and summary records of the Committee to the media and non-governmental organizations, through official websites.

(39) The State party is invited to submit its next periodic report, which will be considered as the fifth periodic report, by 30 June 2012 at the latest.

## 40. **Costa Rica**

(1) The Committee considered the second periodic report of Costa Rica (CAT/C/CRI/2) at its 818th and 821st meetings, held on 5 and 6 May 2008 (CAT/C/SR.818 and 821), and, at its 830th and 831st meetings (CAT/C/SR.830 and 831), adopted the following concluding observations.

### A. Introduction

(2) The Committee notes with satisfaction the presentation of the second periodic report of Costa Rica, welcomes the sincere and open dialogue with the delegation from the State party and expresses appreciation for the written replies to the list of issues (CAT/C/CRI/Q/2/Add.1 and 2), which facilitated the discussions between the delegation and the Committee members. The Committee also thanks the delegation for the replies given to the questions posed and the concerns expressed during consideration of the report.

### B. Positive aspects

(3) The Committee notes with appreciation that during the period since the initial report was considered, the State party has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, as well as the Rome Statute of the International Criminal Court.

(4) The Committee notes with satisfaction the efforts being made by the State party to revise legislation, policies and working practices so as to ensure greater protection of the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and specifically:

(a) The legislative reform criminalizing torture, by means of Law No. 8189 of 6 December 2001 (addition to article 123 bis of the Criminal Code);

(b) The establishment of various means, including a free telephone line, to facilitate the lodging of complaints and habeas corpus applications;

(c) The adoption of a law criminalizing violence against women by the Legislative Assembly in April 2007;

(d) The adoption of a law to enhance efforts to combat the sexual exploitation of minors in June 2007.

## C. Principal areas of concern and recommendations

### Pretrial detention

(5) The Committee endorses the concerns expressed by the Human Rights Committee (CCPR/C/CRI/CO/5) regarding the duration of pretrial detention and the legally authorized regime of incommunicado detention. It also expresses its concern at the high number of persons held in pretrial detention owing to a general increase in violence in the country, as the State party has acknowledged (art. 2).

> **The State party should take prompt steps to restrict the use of pretrial detention, as well as its duration, using alternative methods whenever possible when the accused does not represent a danger to society.**

### Alternative measures

(6) The Committee is concerned at the increase in the prison population and the factors that have contributed to this situation - in particular the limited use of alternative measures, longer prison terms, the criminalization of certain behaviour and the use of pretrial detention as a preventive measure (art. 2).

> **The Committee takes note of the bill introducing a new Criminal Code which will incorporate alternative measures, and urges the State party to speed up the reforms needed to enable the judiciary to impose alternatives to imprisonment.**

### Non-return

(7) The Committee notes with concern that the Migration Bill makes no mention of a right to appeal against the decisions of the Visa and Refuge Commission. The Committee is also concerned at the power which the Migration Bill grants to immigration officials to reject illegal immigrants within a radius of 50 kilometres from the border (with no administrative remedy against such decisions), a power which could affect the principle of non-refoulement laid down in article 3 of the Convention, as well as the protection of victims of trafficking (art. 3).

> **The State party should take steps to ensure that, in the context of migration management, a proper analysis can be conducted of the situation in each case and the situation in the countries from which the "immigrants" come, so as to guarantee respect for the principle of non-refoulement. These steps should include appropriate continuing training of migration officials.**

### Situation of applicants for refugee status

(8) The Committee expresses concern at continued excessive delays in determination of refugee status.

(9) The Committee expresses concern at the statements made by senior officials linking the rise in crime in the country with the presence of refugees, as the Human Rights Committee has already done (CCPR/C/CRI/CO/5).

**The State party should take the necessary steps, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), to speed up the processes of determination of refugee status.**

**The State party should ensure that its officials refrain from making statements which could encourage the stigmatization of refugees and applicants for refugee status.**

### Detention of non-citizens

(10) The Committee expresses concern at the failure to limit the length of administrative detention of aliens. The Committee takes note of the efforts made by the State party to improve conditions in the Detention Centre for aliens, and the plans to modernize the regional offices and border posts so as to provide suitable conditions for immigrants. However, the conditions in the centres for immigrants remain a matter for concern, especially as regards overcrowding and the lack of procedures or machinery for identifying victims of trafficking in persons and others who are entitled to international protection (arts. 2, 3 and 11).

**The State party should ensure that legislation provides for alternatives to custody for migrants. The State party should also set a maximum legal period for detention pending deportation, which should in no circumstances be indefinite.**

**The Committee invites the State party to continue its efforts to improve detention conditions for all immigrants, in cases where administrative detention is absolutely necessary, in accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Minimum Rules for the Treatment of Prisoners.**

**The Committee recommends the adoption of protocols and the provision of proper training for border officials and personnel working in centres for the administrative detention of aliens for the identification of victims of trafficking and others who are entitled to international protection.**

### Ill-treatment and abuse of authority

(11) The Committee takes note of the efforts made by the State party to address cases of abuse of authority by border guards and prison staff, including specific recommendations that officials should avoid actions or omissions which violate rights. However, the Committee remains concerned at cases of abuse of immigrants and citizens, especially on the grounds of their sexual orientation and/or transsexual identity. The Committee considers that, in particular, the rules on public morals can grant the police and judges discretionary power which, combined with prejudices and discriminatory attitudes, can lead to abuse against this group (arts. 2, 11 and 16).

**Through training and awareness creation among those concerned, the State party should foster a policy of respect for human rights for all without discrimination. The State party should take steps to ensure continuous monitoring and periodic evaluation of the impact of the training and awareness creation provided for police officers, border guards and prison personnel.**

### Complaints, investigations and proper convictions

(12) The Committee notes with satisfaction the cases where the Convention has been directly applied by domestic courts. However, the Committee notes that only one complaint of torture has been registered and that no convictions have been handed down for torture since the new law entered into force. The Committee notes with concern that some possible cases of torture have been investigated as abuses of authority despite their gravity. It also notes with concern reports that victims and witnesses are not provided with adequate protection (arts. 2, 11 and 13).

**The State party should ensure that legislation on torture is effectively applied and that all those involved, especially police officers and prison staff, border guards, medical personnel and judicial personnel, receive proper training in the new legislation. Detainees should also be given information on the Convention and domestic legislation and on the rules and guidelines for police officers and prison personnel relating to torture.**

> **The Committee welcomes the bill on victim and witness protection and urges the State party to ensure that the victims and witnesses of serious human rights violations are provided with proper protection as soon as possible.**

**Training on the prohibition of torture**

(13) The Committee expresses concern at the fall in the number of hours devoted to human rights in basic police training (art. 10).

> **The State party should ensure that the police forces receive specific and appropriate training in human rights and on the Convention.**

**Conditions of detention**

(14) The Committee notes with satisfaction the efforts made by the State party to improve the prison infrastructure, solve problems of overcrowding and ensure better health care and better nutrition for prisoners, as well as guaranteeing the right to education and the right to work, including the opening of the Care Centre for Young Adults in September 2005 and the setting up of a unit for prisoners' children aged under 3 (the "Casa Cuna").

(15) The Committee regrets the inadequate budget of the Department, which leads to problems with equipment, allocation of technical and administrative staff and security personnel requirements.

(16) The Committee reiterates the concern it expressed on the occasion of the damage to communal centre F in the La Reforma centre and the detention regime comprising 23 hours of confinement and 1 hour outside (A/56/44, paras. 130-136).

(17) The Committee expresses concern at the general conditions governing access to health care for prisoners. The Committee is particularly concerned that when medical care is not provided in detention centres, security personnel are responsible for decisions on transfers to hospitals without having the necessary technical skills. The Committee also expresses concern at the conditions facing women prisoners.

(18) The Committee expresses concern at the reports of sexual abuse and physical violence against homosexual and transsexual prisoners.

> **The State party should ensure that the Department has the funds it needs so that conditions of detention are in keeping with international rules and principles relating to the rights of persons deprived of their liberty. The State party should also take steps to improve the infrastructure of communal centre F in the La Reforma centre.**
>
> **The Committee recommends that the State party should take steps to boost protection for the most vulnerable population against sexual violence, through such measures as the use of confidential machinery for reporting such violence.**
>
> **The State party should continue its efforts to reorganize the health service so that the conditions in which health care is provided are appropriate and the requisite medical personnel are available in prisons.**
>
> **The National Institute of Criminology should apply a gender-specific policy for women prisoners. It should also pursue the regionalization of women's prisons so as to avoid the uprooting of women prisoners.**
>
> **The Committee notes with satisfaction the establishment of the Casa Cuna centre for prisoners' children aged under 3, and recommends the establishment of similar units in the regional centres.**

### Compensation and rehabilitation for victims

(19) The Committee reiterates the concern at the lack of State programmes for the rehabilitation of victims which it expressed when considering the initial report of the State party (A/56/44, paras. 130-136) (art. 14).

> **The State party should ensure that victims of torture, other ill-treatment, trafficking and domestic and sexual violence are enabled to benefit from the fullest possible rehabilitation. The Committee urges the State party to include in its next periodic report statistics on measures of compensation ordered by the courts and actually made available to female torture victims.**

### Data collection

(20) The Committee notes the lack of data on persons deprived of their liberty broken down by age, sex and civil status. It also notes that the Department of Legal Discipline in the Ministry of Public Security has no data broken down by sex, age, ethnic group or minority group.

> **The next report should contain data on persons deprived of their liberty broken down by age, sex and civil status. The State party should also devise an appropriate system for the collection of data on cases of abuse, broken down by sex, age, ethnic group or minority group.**

### Manufacture of torture equipment

(21) The Committee notes with concern that there is no legal provision banning the manufacture and marketing of equipment specifically designed for purposes of torture.

> **The State party should consider the possibility of devising rules and regulations to ban the manufacture and marketing of equipment specifically designed for purposes of torture.**

### Trafficking in persons

(22) The Committee takes note of the efforts made by the State party to combat trafficking in persons, including the executive decree in 2005 establishing the national coalition to combat illegal smuggling of immigrants and trafficking in persons and the Institutional Protocol for Care for Victims of Trafficking drafted by the National Children's Trust (PANI). However, the Committee expresses concern at the fact that trafficking in persons is not an offence in domestic legislation (art. 16).

> **The State party should criminalize trafficking in persons in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime.**

### Corporal punishment

(23) The Committee notes with satisfaction that corporal punishment is banned in education and in juvenile prisons. However, in the family, article 143 of the Family Code states that parents have the right to correct children in a moderate manner, which has been interpreted as allowing the use of corporal punishment (art. 16).

> **The Committee takes note of the bill to abolish physical punishment of children and young people submitted to the Legislative Assembly by the Ombudsman, and the setting up of a group to discuss the issue. It encourages the State party to expedite the complete prohibition of corporal punishment of children.**

### Domestic violence and violence against women and children

(24) The Committee takes note of the efforts made by the State party to eradicate domestic violence. The Committee welcomes the information provided by the representative of the State party indicating that there is no

legal obstacle to the application of Act No. 7586 on domestic violence to same-sex couples. However, according to information received by the Committee, the authorities often fail to register or properly investigate reports of domestic violence lodged by persons with a partner of the same sex (art. 16).

(25) The Committee regrets the lack of data broken down by sex and age and the lack of precision in the conceptualization of violence against women and children and the categories of analysis and variables used (art. 16).

> **The State party should ensure the protection of all victims of domestic violence and other ill-treatment without any discrimination through the registration and investigation of all cases of torture, as well as the prosecution and conviction of those responsible for such acts. The Committee encourages the State party to set up appropriate programmes to raise awareness among the security forces of domestic violence, including sexual violence and violence against children.**
>
> **The Committee urges the State party to devise a system for the collection of disaggregated data, studies and analyses on the issue of violence against women and children.**

(26) The Committee notes with satisfaction the creation of the post of Ombudsman as a means of preventing torture under the Optional Protocol to the Convention against Torture and recommends that it should receive adequate funds to perform that function effectively.

(27) The State party is urged to disseminate widely the reports it submits to the Committee, its replies to the list of issues, the summary records of the meetings and the concluding observations, and the summary records of the Committee, in the appropriate languages, by means of official websites, the media and non-governmental organizations.

(28) The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting (HRI/MC/2006/3).

(29) The State party is requested to communicate to the Committee within one year its reply to the recommendations made in paragraphs 5, 6, 7, 10 and 12 of the present concluding observations.

(30) The Committee invites the State party to submit its next periodic report, the third, by 30 June 2012 at the latest.

## 41. Iceland

(1) The Committee against Torture considered the third periodic report of Iceland (CAT/C/ISL/3) at its 826th meeting, held on 9 May 2008 (CAT/C/SR.826), and adopted, at its 831st meeting on 15 May 2008 (CAT/C/SR.831), the concluding observations as set out below.

### A. Introduction

(2) The Committee welcomes the third periodic report of Iceland, which was prepared in accordance with the Committee's guidelines and submitted on time. The Committee welcomes also the comprehensive written responses provided to the list of issues (CAT/C/ISL/Q/3/Add.1) and appreciates the fruitful and constructive dialogue with the State party's delegation.

### B. Positive aspects

(3) The Committee welcomes the State party's ongoing efforts to comply with its obligations under the Convention and to prevent and eliminate any acts or conduct contrary to its provisions. The Committee notes, inter alia:

(a) The new Application of Punishments Act, No. 49/2005, including its two regulations on the application of punishment and the training of prison warders;

(b) The provisions of the Penal Code, article 227 (a), that provide a framework for punishment for trafficking in human beings, and the signing of the Council of Europe Convention on Action against Trafficking in Human Beings, in May 2005;

(c) The enactment of laws amending the Criminal Penal Code and the establishment of a plan of action with the aim of a more comprehensive response to violence against women and domestic violence, in particular with respect to legal remedies and in cases of sexual offences;

(d) The issuance of ethical rules for police concerning excessive use of physical force and verbal abuse;

(4) The Committee again notes with satisfaction that no complaints of torture have been received from Iceland.

## C. Principal subjects of concern and recommendations

### Definition of torture and criminalization

(5) While noting the explanations provided by the State party in its second and third periodic reports and in the written replies to the list of issues with regard to the interpretation of the definition of torture and its use in domestic criminal legislation, the Committee regrets that no change has taken place with regard to the State party's position not to fully incorporate the definition of torture as defined in article 1 of the Convention, nor to incorporate torture as a specific crime into domestic criminal legislation (arts. 1 and 4).

**The Committee reiterates its previous recommendation, namely that the definition of torture according to article 1 of the Convention be introduced into Icelandic criminal legislation in order to ensure that all elements of torture are included, and that torture be defined as a specific offence in domestic laws. The Committee also draws the attention of the State party to its general comment No. 2 on the implementation of article 2.**

### Independent monitoring

(6) The Committee notes with appreciation the information provided in the State party report and the written replies to the list of issues that monitoring and inspection of places of detention, prisons and psychiatric facilities can be undertaken by the Parliamentary Ombudsman on his or her own initiative and that recommendations made based on such visits are fully taken into consideration. The Committee is, however, concerned that no legal or administrative system of independent monitoring or inspection of such facilities, in particular of psychiatric facilities, is in place (arts. 2 and 13).

**The State party should enhance the capacity of the office of the Parliamentary Ombudsman through appropriate human and financial resources to allow it to undertake monitoring of places of detention, prisons and psychiatric facilities, and establish an independent monitoring and inspection system for such facilities. The State party should also consider the possibility of establishing a national human rights institution in accordance with the Paris Principles.**

### Prevention of torture and other cruel, inhuman and degrading treatment or punishment

(7) The Committee notes with appreciation the information provided in the State party report and the written replies concerning female and juvenile prisoners and that for practical reasons no separate prisons exist for housing female or juvenile prisoners. The Committee emphasizes that, in the framework of prevention of torture and other cruel, inhuman or degrading treatment or punishment, female prisoners should be separated from male prisoners and juvenile prisoners should be in clearly distinct and separated facilities from adult prisoners (arts. 2 and 11).

**The State party should ensure that female and male prisoners are held in separate facilities and, in particular, that juvenile prisoners are held separately from adults. It should also ensure that the prison wardens involved in dealing with female and juvenile prisoners are trained to deal with the necessary sensitivity and characteristics required.**

(8) The Committee is concerned about some reported cases of inappropriate handling of incidents by law enforcement officers and border guards, in particular at detention centres, airports and in conjunction with manifestations and demonstrations (arts. 2 and 7).

**Regardless of the frequency and gravity of such incidents, the State party should ensure that all allegations are investigated. The State party should provide further detailed information on investigations and the results in its next periodic report.**

**Solitary confinement**

(9) The Committee is concerned about the reported cases of frequent and excessive use of solitary confinement for persons in custody (art. 11).

**The State party should investigate promptly the issue of excessive use of solitary confinement and adopt effective measures to prevent such practice.**

**Non-refoulement and asylum-seeking**

(10) The Committee welcomes the information provided during the dialogue on the State party report with regard to cooperation with the United Nations High Commissioner for Refugees. The Committee is however concerned that only two asylum applications have been approved in the past 20 years, and that the State party is reluctant to issue residence permits, even on humanitarian grounds (art. 3).

**The State party should ensure through legal and administrative procedures, including review by an independent judicial body concerning rejections, that due consideration is given to each individual case before a final decision is reached and that a constant review of the situations in the countries individuals may be returned or expelled to is carried out.**

**The State party should also include in its next report more detailed information on how national security considerations can affect the protection of non-refoulement, in accordance with article 3 of the Convention.**

(11) While noting the information provided in relation to investigations in the framework of the Council of Europe and alleged rendition flights in Europe, the Committee remains concerned about the reported rendition flights through Iceland and the inadequate response to the allegations by the authorities (arts. 3 and 4).

**The State party should provide further information in its next periodic report on measures taken to investigate allegations of rendition flights on Icelandic territory or in its airspace, including outcomes of such measures or investigations.**

**Education and information**

(12) The Committee notes that basic police training and training of prison warders include elements of human rights and the international obligations of Iceland. Furthermore, the Committee notes that the new Coast Guard Act No. 52/2006 states that coast guards should comply with the Police Act and the Criminal Procedure Code. The Committee is, however, concerned that, in some instances, at police stations and airports, police officers and border guards have not handled all incidents with the respect due to the human rights of the individual (art. 10).

**The State party should ensure that all law enforcement personnel receive adequate and regular training on the international obligations of Iceland, in particular with respect to its obligations under the Convention against Torture. In addition, the State party should introduce formal training in human rights and humanitarian law for peacekeepers and other personnel assigned to international monitoring missions with the United Nations, the North Atlantic Treaty Organization and the European Union.**

### Evidence in accordance with article 15

(13) The Committee, while noting the information provided in the State party report and during the dialogue, remains concerned that evidence that might have been obtained through torture may still be used in judicial proceedings (art. 15).

**The Committee reiterates its previous recommendation, namely that the State party should bring its domestic criminal legislation into line with the provisions of article 15 of the Convention so as to exclude explicitly any evidence obtained as a result of torture.**

**The State party should also review its practices with regard to video and tape recordings of interrogation procedures with a view to primarily protecting the defendant.**

### Trafficking in human beings

(14) The Committee notes the developments in the legal and policy frameworks with respect to trafficking in human beings, in particular the new draft bill currently under consideration by the Parliament and the preparations for a national plan of action against trafficking in human beings.

The Committee is, however, concerned at the fact that incidents of trafficking both through and inside the country have been reported and that the State party does not have a system to monitor and assess the extent and impact of or to address this phenomenon effectively (arts. 2 and 16).

**The State party should ensure that the plan of action receives adequate financial support for its implementation, and establish a coordinated government-wide programme for data collection, monitoring of the actual situation and providing adequate measures to prevent trafficking in persons and assistance to victims.**

**The State party should also adopt specific training and sensitization programmes for law enforcement personnel and border guards, and public awareness-raising campaigns revealing the current situation of trafficking in human beings in the country.**

### Violence against women and children

(15) The Committee notes the recent developments in the national legislative and policy framework on measures to address violence against women and children and domestic violence, in particular the amendments providing for greater punishment when violence has occurred within the family, restraining orders and the expansion of the term of rape. The Committee is of the view that more emphasis could be given to adequate medical and legal services and assistance to victims of violence against women and domestic violence, and to addressing attitudes and opinions in society (arts. 4 and 16).

**The State party should continue its efforts to address domestic violence through legislative and policy measures and ensure that the part of the Plan of Action 2006 to 2011 covering protection and assistance to victims receives sufficient funding and the human resources necessary for its implementation. The State party is encouraged to develop national public information campaigns and stimulate broader public discussions in order to address attitudes and stereotypes leading to violence against women further. The State party should provide further detailed information with respect to the assistance and services available for victims in its next periodic report.**

(16) While noting the State party's signature of the Optional Protocol to the Convention against Torture, the Committee encourages the State party to proceed to its ratification at the earliest possible date.

(17) The Committee invites the State party to ratify other United Nations human rights treaties to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, and the International Convention for the Protection of All Persons from Enforced Disappearance.

(18) The Committee invites the State party to submit its core document in accordance with the requirements of common-core documents in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies (HRI/GEN/2/Rev.4).

(19) The Committee requests the State party to disseminate its report widely, together with the written answers to the Committee's questions and the concluding observations and summary records of the Committee, through official websites, the media and non-governmental organizations.

(20) The Committee requests the State party to provide, within one year, information on its responses to the recommendations contained in paragraphs 9, 14 and 15 above.

(21) The State party is invited to submit its next report, which will be the fifth periodic report, by 30 June 2012.

## 42. Indonesia

(1) The Committee considered the second periodic report of Indonesia (CAT/C/72/Add.1) at its 819th and 822nd meetings, held on 6 and 7 May 2008 (CAT/C/SR.819 and CAT/C/SR.822), and adopted, at its 832nd meeting, on 15 May 2008 (CAT/C/SR.832), the concluding observations as set out below.

### A. Introduction

(2) The Committee welcomes the second periodic report of Indonesia, which, while generally following the Committee's guidelines for reporting, lacks statistical data and practical information on the implementation of the provisions of the Convention and relevant domestic legislation.

(3) The Committee expresses its appreciation for the extensive written response provided to the list of issues (CAT/C/IDN/Q/2). The Committee also appreciates the expertise, size and high level of the State party delegation, the comprehensive and fruitful dialogue conducted and the additional oral information provided by representatives of the State party to questions raised and concerns expressed during the consideration of the report.

### B. Positive aspects

(4) The Committee welcomes the continuing effort of the State party to strengthen its institutions and legislation to safeguard universal human rights protection, including the establishment of the Constitutional Court, the National Law Commission, the Judiciary Commission, the Ombudsman Commission, the Prosecutorial Commission, the Police Commission and the Eradication of Corruption Commission, pursuant to articles 2 and 10 of Law No. 4/2004 on Judicial Authority.

(5) The Committee further welcomes the ongoing reform of the State party legal framework with the adoption of the following acts:

(a) Law No. 21/2007 on Combating Criminal Acts of Trafficking in Persons;

(b) Law No. 13/2006 on Witness and Victim Protection;

(c) Law No. 39/2004 on the Placement and Protection of Migrant Workers;

(d) Law No. 23/2004 on Domestic Violence;

(e) Law No. 23/2002 on Child Protection;

(f) Presidential Decree No. 40/2004 on the second National Plan of Action on Human Rights (2004-2009);

(g) Presidential Decree No. 87/2003 on the National Plan of Action on the Eradication of Sexual Exploitation of Women and Children, No. 88/2002 on the National Action Plan to Combat Trafficking of Women and Children, No. 87/2002 on the National Action Plan to Combat the Commercial Sexual Exploitation of Children, and No. 59/2002 on the National Action Plan to Combat the Worst Forms of Child Labour, as well as Government regulation No. 9/2008 on Procedures and Methods for Integrated Services for Witnesses and Victims of Trafficking in Persons.

(6) The Committee welcomes the accession of Indonesia to the International Covenant on Civil and Political Rights in 2006.

(7) The Committee also notes with appreciation that Indonesia responded positively to the recommendation of the Committee to receive the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and that a visit to the State party was made in November 2007. The Committee further notes that the Government of Indonesia has also received other special rapporteurs of the Human Rights Council, including the Special Rapporteur on the human rights of migrants, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers.

(8) The Committee further notes with satisfaction that specific reports were submitted to the Committee by the National Commission on Violence Against Women (Komnas Perempuan) and the National Human Rights Commission (Komnas HAM). The Committee regrets that the latter could not attend its meetings.

(9) The Committee also welcomes the efforts made by non-governmental organizations, especially national and local organizations, to provide it with relevant reports and information, and encourages the State party to strengthen further its cooperation with them with regard to the implementation of the provisions of the Convention.

## C. Subjects of concern and recommendations

### Widespread torture and ill-treatment and insufficient safeguards during police detention

(10) The Committee is deeply concerned about the numerous, ongoing credible and consistent allegations, corroborated by the Special Rapporteur on torture in his report (A/HRC/7/3/Add.7) and other sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. Furthermore, there are insufficient legal safeguards for detainees, including:

(a) Failure to bring detainees promptly before a judge, thus keeping them in prolonged police custody for up to 61 days;

(b) Absence of systematic registration of all detainees, including juveniles, and failure to keep records of all periods of pretrial detention;

(c) Restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members (arts. 2, 10 and 11).

**As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country and to announce a zero-tolerance policy on any ill-treatment or torture by State officials.**

**As part of this, the State party should implement effective measures promptly to ensure that all detained suspects are afforded, in practice, all fundamental legal safeguards during their detention. These include, in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including**

**about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all suspects under criminal investigation are registered, especially children.**

**The State party should also reinforce its training programmes for all law enforcement personnel, including all members of the judiciary and prosecutors, on the absolute prohibition of torture, as the State party is obliged to carry out such training under the Convention. Furthermore, it should keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing cases of torture.**

**Disproportionate use of force and widespread torture during military operations**

(11) The Committee is also deeply concerned about numerous, ongoing credible and consistent allegations, corroborated by the report of the Special Rapporteur on torture and other sources, of the routine and disproportionate use of force and widespread torture and other cruel, inhuman and degrading treatment or punishment by members of the security and police forces, including by members of the armed forces, mobile police units ("Brimob") and paramilitary groups during military and "sweep" operations, especially in Papua, Aceh and in other provinces where there have been armed conflicts (arts. 2, 10 and 11).

**The State party should take all necessary measures promptly to prevent security and police forces from using disproportionate force and/or torture during military operations, especially against children.**

**The State party should implement effective measures promptly to ensure that all persons are afforded all fundamental legal safeguards during their detention. These include, in particular, training programmes for all military personnel on the absolute prohibition of torture. The State party should also ensure that all persons detained during military operations are always registered.**

**Impunity**

(12) The Committee is deeply concerned that credible allegations of torture and/or ill-treatment committed by law enforcement, military and intelligence services personnel are seldom investigated and prosecuted and that perpetrators are either rarely convicted or sentenced to lenient penalties that are not in accordance with the grave nature of their crimes. The Committee reiterates its grave concerns over the climate of impunity for perpetrators of acts of torture, including military, police and other State officials, particularly those holding senior positions who are alleged to have planned, commanded or perpetrated acts of torture. It notes with regret that no State official alleged to have perpetrated torture has been found guilty, as confirmed by the Special Rapporteur on torture (arts. 2 and 12).

**The State party should ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially, and that the perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by the Convention.**

**In view of the State party's reaffirmed commitment at the universal periodic review to combat impunity (A/HRC/WG.6/1/IDN/4, para. 76.4), State officials should publicly announce a zero-tolerance policy for perpetrators of acts of torture and other cruel inhuman and degrading treatment or punishment and support prosecution.**

**Definition of torture and appropriate penalties for acts of torture**

(13) While noting the acknowledgment by the State party that there was no Indonesian law which covers the definition of torture as stated in article 1 of the Convention, the Committee remains concerned that the Indonesian Criminal Code does not contain a definition of torture and also that the crime of torture as defined in article 1, section 4, of Law No. 39/1999 on Human Rights and in article 9, paragraph (*f*) of Law No. 26/2000 on Human Rights Courts is limited so that it is only applicable to "gross violations of human rights". No perpetrators of acts of torture have been convicted under these laws. The Committee is also concerned about the absence of appropriate penalties applicable to acts of torture in the Penal Code, qualified as "maltreatment" in articles 351 to 358 of the Code (arts. 1 and 4).

**The Committee reiterates its previous recommendations and the recommendations of the Special Rapporteur on torture on the report on his visit to Indonesia, that the State party should, without delay, include a definition of torture in its current penal legislation in full conformity with article 1 of the Convention. Two approaches merit consideration: (a) the prompt adoption of the draft comprehensive Penal Code; and (b) the adoption of a stand-alone specific bill on torture, following the State party's example of adopting other individual laws in the field of human rights, such as those welcomed in paragraph 5 above.**

**The State party should also ensure that all acts of torture are punishable by appropriate penalties which take into account their grave nature, as set out in paragraph 2, article 4, of the Convention.**

### Coerced confessions

(14) The Committee is concerned that the current investigation system in the State party relies on confessions as a common form of evidence for prosecution, thus creating conditions that may facilitate the use of torture and ill-treatment of suspects. The Committee regrets that the State party did not sufficiently clarify the legal provisions ensuring that any statements that have been made under torture shall not be invoked as evidence under any proceedings, as required by the Convention, and did not provide statistical information on such cases (art. 15).

**The State party should take the measures necessary to ensure that criminal convictions require evidence other than the confession of the detainee, and ensure that statements that have been made under torture are not invoked as evidence in any proceedings, except against a person accused of torture, in accordance with the provisions of the Convention.**

**The State party is requested to review criminal convictions based solely on confessions in order to identify instances of wrongful conviction based on evidence obtained through torture or ill-treatment, to take appropriate remedial measures and to inform the Committee of its findings.**

### Local regulations and breaches of the Convention

(15) The Committee is deeply concerned that local regulations, such as the Aceh Criminal Code, adopted in 2005, introduced corporal punishment for certain new offences. The Committee is concerned that the enforcement of such provisions is under the authority of a "morality police", the *Wilayatul Hisbah*, which exercises an undefined jurisdiction and whose supervision by public State institutions is unclear. Furthermore, the Committee is concerned that the necessary legal fundamental safeguards do not exist for persons detained by such officials, including the absence of a right to legal counsel, the apparent presumption of guilt, the execution of punishment in public and the use of physically abusive methods (such as flogging or caning) that contravene the Convention and national law. In addition, it is reported that the punishments meted out by this policing body have a disproportionate impact on women (arts. 2 and 16).

**The State party should review all its national and local criminal legislations, especially the 2005 Aceh Criminal Code, that authorize the use of corporal punishment as criminal sanctions, with a view to abolishing them immediately, as such punishments constitute a breach of the obligations imposed by the Convention.**

**Furthermore, such a policing body undermines the provisions of Law No. 22/1999 on Regional Autonomy and Law No. 32/2004 on Local Government, which provide that law, religion and security sectors remain under the authority of the national Government.**

**The State party should also ensure that the members of the *Wilayatul Hisbah* exercise a defined jurisdiction, are properly trained and operate in conformity with the provisions of the Convention, especially on the prohibition of torture and ill-treatment, and that their acts are subject to review by ordinary judicial authorities. State institutions should supervise the actions of the *Wilayatul Hisbah* and ensure that fundamental legal safeguards apply to all persons who are accused of violating matters**

**of its concern. The State party should further ensure that a legal aid mechanism exists to guarantee that any person has an enforceable right to a lawyer and other due process guarantees, so that all suspects have the possibility of defending themselves and of lodging complaints of abusive treatment in violation of national law and the Convention.**

**The State party should review, through its relevant institutions, including governmental and judicial mechanisms at all levels, all local regulations in order to ensure they are in conformity with the Constitution and with ratified legal international instruments, in particular the Convention.**

### Violence against women, including sexual and domestic violence

(16) The Committee is concerned by allegations of the high incidence of rape in conflict areas perpetrated by military personnel as a form of torture and ill-treatment and by the absence of investigation, prosecution and conviction of the perpetrators. In addition, the Committee is also concerned at the narrow definition of rape in the Penal Code and at the evidentiary requirement of article 185, paragraph 2, of the Code of Criminal Procedure, which requires rape complaints to be confirmed by two witnesses. While acknowledging the adoption of Law No. 23/2004 on domestic violence, the Committee remains concerned about the high reported incidence of domestic violence in the State party, the absence of implementing regulations, the insufficient awareness and training of law enforcement officials and allocation of Government funds to support the new system and the absence of statistical data on such phenomena. The Committee also noted the information provided by the delegation on female genital mutilation, and remains seriously concerned about its widespread practice in the State party (art. 16).

**The State party should ensure prompt, impartial and effective investigation of all allegations of rape and sexual violence, including those perpetrated in military conflict areas, and prosecute and punish perpetrators with penalties appropriate to the grave nature of their acts. The State party should, without delay, repeal all discriminatory laws against women, including article 185, paragraph 2, of the Code of Criminal Procedure.**

**The State party should adopt all adequate measures to eradicate the persistent practice of female genital mutilation, including through awareness-raising campaigns in cooperation with civil society organizations.**

**The State party should adopt all necessary measures to implement Law No. 23/2004, which includes the training of law enforcement officials, especially in cooperation with civil society organizations, to allocate adequate funding and collect relevant information to prevent and combat domestic violence.**

### Juvenile justice system

(17) While noting the State party's intention to raise the minimum age of criminal responsibility to 12 years, the Committee is deeply concerned that it remains established at 8 years of age, that detained children are not fully segregated from adults, that a large number of children are sentenced to jail terms for minor offences and that corporal punishment is lawful and frequently used in juvenile prisons, such as in the Kutoarjo prison. The Committee is also concerned at the lack of a comprehensive juvenile justice system oriented to education and the socialization of children in conflict with the law. Further, there is inadequate protection of street children against violence (arts. 2 and 16).

**The State party should, as a matter of urgency, raise the minimum age of criminal responsibility in order to bring it into line with the generally accepted international norms on the subject and to abolish all corporal punishment of children.**

**The State party should take the necessary measures to guarantee the proper functioning of a juvenile justice system including, inter alia, by treating minors in a manner appropriate to their age, in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty.**

### Internally displaced persons

(18) The Committee is concerned at the situation of refugees and internally displaced persons as a consequence of armed conflict, especially children living in refugee camps, including Timorese children separated from their families, who are often subject to ill-treatment (arts. 14 and 16).

**The State party should take effective measures to prevent violence affecting refugees and internally displaced persons, especially children, who should be registered at birth and prevented from being used in armed conflict. The State party should also strengthen the measures taken to ensure safe repatriation and relocation of all refugees and displaced persons, in cooperation with the United Nations.**

### Violence against the Ahmadiyah and persons belonging to other minorities

(19) The Committee expresses its concern at incitement and acts of violence against persons belonging to minorities, in particular the Ahmadiyah and other minority religious communities. Furthermore, there are persistent, disturbing allegations of a routine failure to investigate such violence and the reluctance on the part of the police and authorities to provide the Ahmadiyah with adequate protection or to conduct prompt, impartial and effective investigations into such acts. The Committee is especially concerned that the Attorney-General has announced plans to make public a joint ministerial decree that will criminalize the activities of the Ahmadiyah. The Committee notes with concern the report of the Special Rapporteur on freedom of religion or belief, which refers to the State party's intention to prohibit Ahmadiyah activities (E/CN.4/2006/5/Add.1, para. 163); it reiterates the Special Rapporteur's view that "there is no excuse for the use of violence against its members". The Committee is especially concerned that State party officials who may authorize a decree banning the Ahmadiyah, thereby putting members of that community at further risk of ill-treatment and physical abuse, also express the view that the Ahmadiyah must refrain from "provoking" members of the community, in effect blaming the group at risk (arts. 2, 12 and 16).

**Recalling the Committee's general comment No. 2 (CAT/C/GC/2, para. 21), the State party should ensure the protection of members of groups especially at risk of ill-treatment, by prosecuting and punishing all acts of violence and abuses against those individuals and ensuring implementation of positive measures of prevention and protection.**

**The State party should ensure prompt, impartial and effective investigations into all ethnically motivated violence and discrimination, including acts directed against persons belonging to ethnic and religious minorities, and prosecute and punish perpetrators with penalties appropriate to the nature of those acts.**

**The State party should also publicly condemn hate speech and crimes and other violent acts of racial discrimination and related violence and should work to eradicate incitement and any role public officials or law enforcement personnel might have in consenting or acquiescing in such violence. It should ensure that officials are held accountable for action or inaction that breaches the Convention.**

**The State party should give prompt consideration to expanding the recruitment of persons belonging to ethnic and religious minorities into law enforcement, and to respond favourably to the request of the Special Rapporteur on freedom of religion to visit the country.**

### Trafficking and violence against migrant workers

(20) While noting the adoption of Law No. 21/2007 on trafficking in persons, the Committee remains concerned at the high estimates by the State party of victims of trafficking, as compared to the limited number of investigations of such cases, and at the absence of information on prosecutions and convictions. The Committee is also concerned at reported cases of ill-treatment of migrant workers, especially women, reportedly abused by Indonesian recruiting companies, which often place them in situations that impair the enjoyment of their human rights while abroad, including debt bondage, forced labour and other ill-treatment, including sexual abuse (art. 16).

**The State party should take all necessary measures to implement the current laws combating trafficking and provide protection for victims and their access to medical, social rehabilitative and legal services, including counselling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, conduct prompt, impartial and effective investigation into all allegations of trafficking and ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes.**

**The State party is strongly encouraged to strengthen the role of Indonesian diplomatic and consular missions abroad, in accordance with Presidential Instruction No. 6/2006, reinforcing the Citizens' Advisory Services, as well as its cooperation with countries receiving Indonesian migrant workers. The State party should ensure independent monitoring of terminal 3 of Jakarta international airport, including by civil society organizations.**

### Harassment and violence against human rights defenders

(21) The Committee expresses its concern at information on a common pattern of harassment and violence against human rights defenders, corroborated by the Special Representative of the Secretary-General on the situation of human rights defenders in her report on her visit to Indonesia (A/HRC/7/28/Add.2) in June 2007. Such actions severely hamper the capacity of civil society monitoring groups to function. The Committee notes with satisfaction the sentence of 25 January 2008 of the Supreme Court convicting and sentencing one person for the murder of Munir Said Thalib to 20 years of imprisonment, but regrets that the instigators of this crime have not yet been brought to justice (art. 16).

**The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, and to ensure the prompt, impartial and effective investigation of such acts.**

### Administration of justice and the judiciary

(22) The Committee is concerned about numerous extensive allegations, corroborated by the Special Rapporteur on the independence of judges and lawyers in his report (E/CN.4/2003/65/Add.2) and other sources, of corruption in the administration of justice, in particular in the judiciary, and of collusion and nepotism in the public prosecution service, as well as with members of an under-regulated legal profession (arts. 2 and 12).

**As the State party continues its process of transition to a democratic regime committed to upholding the rule of law and human rights, it should strengthen the independence of the judiciary, prevent and combat corruption, collusion and nepotism in the administration of justice, and regulate the legal profession.**

### Human rights courts and ad hoc human rights courts

(23) The Committee is troubled that human rights courts, including ad hoc ones, which are designed to deal "specifically with gross violations of human rights", including torture, genocide and crimes against humanity, pursuant to Law No. 26/2000, were not able to secure the conviction of any of the alleged perpetrators of gross human rights violations in relation to the Tanjung Priok (1984), East Timor (1999) and Abepura (2000) cases, especially now that the Supreme Court has acquitted Enrico Guterres (arts. 2, 6 and 12).

**The State party should consider amending its legislation on human rights courts, since they face serious difficulties in carrying out their judicial mandate, which has lead to de facto impunity for perpetrators of gross human rights violations.**

### National Commission on Human Rights

(24) The Committee remains concerned about the difficulties the National Commission on Human Rights (Komnas HAM) has had in carrying out its functions owing in part to the lack of cooperation from other State party institutions, the failure of State officials to publish the reports on its investigations, its inability to challenge a

decision of the Attorney-General not to prosecute a case, as well as the absence of security of appointment of its members. Since, according to Law 26/2000, Komnas HAM has the sole responsibility for conducting initial investigations of "gross violations of human rights", including torture, these limitations can impede efforts to prosecute perpetrators of torture. The Committee is concerned at the fact that members of the Government have stated that military officials should ignore the summons from Komnas HAM in connection with its investigations of gross violations of human rights, such as in the Talangsari, Lampung killing case (arts. 2 and 12).

**The State party should ensure the effective functioning of Komnas HAM by adopting adequate measures, inter alia, by strengthening its independence, mandate, resources and procedures, and reinforcing the independence and security of its members. Members of the Government and other high-ranking officials should fully cooperate with Komnas HAM.**

### Lack of effective investigation and prosecution by the Attorney-General

(25) The Committee is concerned by the absence of prompt, impartial and effective investigations into allegations of torture and ill-treatment by the Attorney-General's office, including with regard to cases presented by the National Commission on Human Rights (Komnas HAM), such as in the Wasior, Wamena (1997/1998) enforced disappearances or Trisakti, Semanggi I and Semanggi II cases (art. 12).

**The State party should reform the Attorney-General's office to ensure that it proceeds with criminal prosecution into allegations of torture and ill-treatment with independence and impartiality. In addition, the State party should establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment. The State party should also publish, without delay, the reports of Komnas HAM investigations.**

### Monitoring detention facilities and preventive mechanism

(26) The Committee is concerned about the absence of an effective independent monitoring mechanism on the situation of detainees, including unannounced visits to all places of detention or custody. The Committee is further concerned that the State party's intention to devolve to local authorities a variety of such mechanisms may lead to different standards of monitoring of detention facilities throughout the State party (art. 2).

**The State party should establish consistent and comprehensive standards for independent monitoring mechanisms of all places of detention, ensuring that any body established, at the local or the national level, has a strong and impartial mandate and adequate resources.**

### International judicial cooperation

(27) The Committee is concerned with the State party's lack of international judicial cooperation in investigating, prosecuting or extraditing perpetrators of acts of gross human rights violations, especially with regard to acts perpetrated in East Timor in 1999. Furthermore, it is deeply troubled at evidence that alleged perpetrators of war crimes wanted by Interpol, such as Colonel Siagian Burhanuddhin, for whom Interpol has issued a red notice, are currently serving in the Indonesian military forces. The Committee regrets the refusal of the State party to provide information on the result of its cooperation with United Nations and Timorese institutions, especially as full cooperation was recommended by the Committee in its previous concluding observations. The Committee is further concerned that the Commission on Truth and Friendship between Indonesia and Timor-Leste has a mandate to recommend amnesties, including for those involved in gross human rights violations (arts. 5, 6, 7, 8 and 9).

**The State party should fully cooperate with Timorese, United Nations and relevant international institutions, in particular by providing assistance in investigations or court proceedings, including affording full access to relevant files, authorizing visits and transferring suspects wanted by Interpol or other relevant authorized bodies. The State party should investigate actively and secure alleged suspects of human rights violations, who should be extradited or prosecuted in the State party.**

**The State party should not establish nor engage in any reconciliation mechanism that promotes amnesties for perpetrators of acts of torture, war crimes or crimes against humanity.**

**Non-refoulement and risk of torture (art. 3)**

(28) The Committee is concerned by the failure of the State party to clarify how it includes in its national laws or practice the prohibition on returning a person to a country where he or she faces a substantial risk of torture, and hence how the State party ensures that its obligations under article 3 of the Convention are fulfilled (art. 3).

> **Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.**
>
> **When determining the applicability of its obligations under article 3 of the Convention, the State party should examine thoroughly the merits of each individual case, ensure that adequate judicial mechanisms for the review of the decision are in place and sufficient legal defence available for each person subject to extradition, and ensure effective post-return monitoring arrangements.**
>
> **The State party should adopt appropriate legislation to incorporate into domestic law its obligation under article 3 of the Convention, thereby preventing any persons from being expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would be in danger of being subject to torture.**

**Universal jurisdiction**

(29) The Committee regrets the lack of clarity and information on the existence of the necessary legislative measures establishing the State party's jurisdiction over acts of torture (arts. 5, 6, 7 and 8).

> **The State party should establish its jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention.**

**Truth and Reconciliation Commission**

(30) The Committee acknowledges that the Constitutional Court has repealed Law No. 27/2004 on the Truth and Reconciliation Commission because it would have sanctioned amnesty for non-derogable offences. Nonetheless, the Committee remains concerned about the mandate of a future commission, as cited in the State party's reply to the Committee's list of issues (arts. 2, 12 and 14).

> **The State party should consider carefully the mandate of the future Commission of Truth and Reconciliation, in the light of other similar international experiences and in compliance with its obligation under the Convention. Such a commission should, inter alia, be empowered to investigate gross human rights violations and compensate victims while proscribing amnesties for perpetrators of acts of torture.**

**Witness and victim protection**

(31) While welcoming the adoption of Law No. 13/2006 on Witness and Victim Protection, the Committee remains concerned about the absence of implementing regulations, the mistreatment of witnesses and victims, and the insufficient training of law enforcement officials and allocation of Government funds to support the new system (arts. 12, 13 and 14).

> **The State party should, without delay, establish a witness and victim protection body, with all relevant measures required to implement Law No. 13/2006, including the allocation of necessary funding for the functioning of such a new system, the adequate training of law enforcement officials, especially in cooperation with civil society organizations, and an appropriate gender-balanced composition.**

**Compensation and rehabilitation**

(32) The Committee expresses its concern about the lack of compensation for victims of torture and other cruel, inhuman or degrading treatment, and at the limited measures for the rehabilitation of victims of torture, ill-treatment, trafficking and domestic and sexual violence (art. 14).

> **The State party should ensure that adequate compensation is provided to victims of torture and ill-treatment and that appropriate rehabilitation programmes are provided to all victims of torture, ill-treatment, trafficking and domestic and other sexual violence, including medical and psychological assistance.**

**Legal aid**

(33) The Committee expresses its concern about the difficulties persons, including members of vulnerable groups, experience in their efforts to exercise the right to make complaints and to obtain redress and fair and adequate compensation as victims of acts of torture (arts. 13 and 14).

> **The State party should take measures to provide an effective free legal aid system, in particular for persons at risk or belonging to groups made vulnerable. It should ensure that the system is adequately resourced to guarantee that all victims of acts of torture and ill-treatment can exercise their rights under the Convention.**

**Human rights training**

(34) While acknowledging a variety of programmes and manuals prepared by the State party, the Committee regrets the insufficient training with regard to the provisions of the Convention for law enforcement, military and security personnel, as well as for judges and prosecutors. The Committee also notes with concern the lack of specific training of medical personnel in detention facilities to detect signs of torture and ill-treatment (arts. 10 and 11).

> **The State party should reinforce its training programmes for all law enforcement and military personnel on the absolute prohibition of torture, as well as for all members of the judiciary and prosecutors on the specific obligations under the Convention.**
>
> **The State party should also ensure adequate training for all medical personnel involved with detainees, to detect signs of torture and ill-treatment in accordance with international standards, such as those outlined in the Istanbul Protocol.**

**Data collection**

(35) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and military personnel, as well as on trafficking, enforced disappearances, internally displaced persons, violence against children, ill-treatment of migrant workers, violence against minorities and domestic and sexual violence.

> **The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking, enforced disappearances, internally displaced persons, violence against children, ill-treatment of migrant workers, violence against minorities and domestic and sexual violence, especially in military conflict areas, as well as on compensation and rehabilitation provided to the victims.**

(36) The Committee encourages the State party to implement the recommendations contained in the report of the Special Rapporteur on torture on his visit in November 2007 (A/HRC/7/3/Add.7), the report of the Special Rapporteur on the human rights of migrants on his visit in December 2006 (A/HRC/4/24/Add.3), the report of the Special Representative of the Secretary-General on the situation of human rights defenders on her visit in June 2007 (A/HRC/7/28/Add.2) and the report of the Special Rapporteur on the independence of judges and lawyers on his visit in July 2002 (E/CN.4/2003/65/Add.2).

(37) The Committee also encourages the State party to consider making the declaration under article 22 of the Convention, thereby recognizing the competence of the Committee to receive and consider individual communications.

(38) The Committee reiterates its recommendation that the State party consider withdrawing its reservations and declarations to the Convention.

(39) In view of the commitment of Indonesia to ratify the Optional Protocol to the Convention by 2009, as indicated in its second national human rights action plan, the Committee encourages the State party to consider the establishment of a national preventive mechanism.

(40) The State party should consider ratifying the major United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(41) The State party should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, by means of official websites and the media, in particular to groups made vulnerable.

(42) The Committee invites the State party to submit its core document in accordance with the requirements of the common-core document in the harmonized guidelines on reporting, as recommended by the international human rights treaty bodies (HRI/MC/2006/3 and Corr.1).

(43) The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 10, 15, 19, 20, 21 and 25 above.

(44) The State party is invited to submit its next periodic report, which will be its third periodic report, by 30 June 2012.

## 43. **Sweden**

(1) The Committee considered the fifth periodic report of Sweden (CAT/C/SWE/5) at its 811th and 812th meetings (CAT/C/SR.811 and 812), held on 29 and 30 May 2008, and adopted, at its 827th meeting (CAT/C/SR.827), the following concluding observations.

### A. Introduction

(2) The Committee welcomes the submission of the fifth periodic report of Sweden and the information presented therein. The Committee also expresses its appreciation for the State party's thorough written responses to the list of issues [illegible]T/C/SWE/Q/5/Add.1), which provided additional information on the legislative, administrative, judicial and other measures taken by the State party in order to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, the Committee notes with satisfaction the constructive efforts made by the multisectoral State party delegation to provide additional information and explanation during the dialogue.

### B. Positive aspects

(3) The Committee notes with appreciation that in the period since the consideration of the last periodic report, the State party has acceded to or ratified a number of international instruments, including:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 19 January 2007;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 1 July 2004;

(c) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 24 April 2003; and

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 20 February 2003.

(4) Furthermore, the Committee welcomes the ratification of the Optional Protocol to the Convention, on 14 September 2005, and the recent visit of the Subcommittee on Prevention of Torture (SPT) to Sweden from 10 to 14 March 2008.

(5) The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and ill-treatment, in particular:

(a) The amendment of the Swedish Aliens Act in 2006, which introduces a new appeal system, includes an explicit provision on non-refoulement and provides for the granting of refugee status to persons claiming fear of persecution on grounds of gender and sexual orientation;

(b) The adoption of new legislation on fundamental safeguards, including access to a lawyer and notification of custody that entered into force on 1 April 2008 (Law No. 2008:67);

(c) The adoption of a national human rights plan of action for the period 2006-2009;

(d) The adoption, in November 2007, of the action plan to combat men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships (Govt. Comm. 2007/08:39);

(e) The common Action Plan developed by the Border Control Police, the Migration Board and the Social Services which aims to minimise the risks of unaccompanied asylum-seeking children disappearing and becoming victims of trafficking.

(6) The Committee commends the State party for its commitment to international human rights obligations, in particular the clear and unequivocal stance that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute.

(7) The Committee notes with satisfaction that the Government has allocated additional resources to the Prison and Probation Administration to create better facilities, both in prisons and remand prisons, and to build a number of new prisons and remand prisons to increase their capacity.

(8) The Committee notes with appreciation that the State party is continuously reviewing and analysing its compliance with international human rights obligations through commissions and studies established for such purpose and the appointment of special investigators.

## C. Principal subjects of concern and recommendations

### Definition of torture

(9) Notwithstanding the State party's assertion that under the Swedish Criminal Code all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable, the Committee regrets that the State party has not changed its position with regard to the incorporation into domestic law of the crime of torture as defined in article 1 of the Convention (arts. 1 and 4).

> **The State party should incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention as distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself.**

### Statute of limitations

(10) The Committee notes with concern that the offence of torture, which as such does not exist in the Swedish Criminal Code, is punishable under other provisions of the Criminal Code, and is, therefore, subject to the statute of limitations. While noting information provided by the delegation that a review of the statute of limitations will be conducted, the Committee is concerned that the statute of limitations applicable to provisions of the Criminal Code may prevent investigation, prosecution and punishment of these grave crimes, in particular when the punishable act has been committed abroad. Taking into account the grave nature of acts of torture, the Committee is of the view that acts of torture cannot be subject to any statute of limitations (arts. 1, 4 and 12).

> **The State party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture, attempts to commit torture, and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.**

### Fundamental safeguards

(11) The Committee notes with appreciation the new legislation on fundamental safeguards that entered into force on 1 April 2008 in respect of access to a lawyer and notification of custody. However, it is concerned that a public defence counsel will only be appointed once the person is considered to be a suspect. The Committee regrets that Swedish legislation does not include a legal provision on access to a doctor and that a request to see a doctor is evaluated by, and therefore left to the discretion of, the police officer in charge. It further regrets reports that notification of custody is not systematically delivered to family members and is frequently delayed with reference to possible interference with the investigation. The Committee notes that an information leaflet on the fundamental rights afforded to persons suspected of a crime and therefore detained and deprived of his or her liberty has been produced by the National Police Board, in cooperation with the Swedish Prosecution Service, and that this leaflet is currently being translated into the most commonly used languages (arts. 2, 11, 13 and 16).

> **The State party should take effective measures to ensure that all detainees are afforded fundamental legal safeguards in practice, including the right to have access to a lawyer and a doctor and the right of detained persons to inform a close relative or another third party of their choice of their situation. The Committee emphasizes that persons in custody should benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty and throughout the investigation phase, the whole of the trial and during appeals. Furthermore, the State party should finalize the translation of the information leaflet on fundamental rights as soon as possible and widely disseminate it to all places where a person may be deprived of his or her liberty.**

### Detention of asylum-seekers

(12) The Committee notes that positive changes have occurred in the Migration Board's policy on reception of undocumented asylum-seekers and pre-deportation detention which have resulted in a decrease in detention rates. The Committee is, however, concerned that pre-deportation detention is common and it regrets that there is no absolute limit on the length of time that an asylum-seeker can be detained. The Committee is also concerned at information that asylum seekers who are a risk to themselves or others are sometimes placed in remand prisons (arts. 2, 3, 11 and 16).

> **The State party should take effective measures to ensure that detention of asylum-seekers is used only in exceptional circumstances or as a measure of last resort, and then only for the shortest possible time. Furthermore, the State party should consider other placement alternatives for asylum-seekers who are in need of care that are suitable for their particular condition.**

### Non-refoulement

(13) The Committee welcomes the inclusion in the Aliens Act of a new ground for issuing a residence permit whereby an alien will normally be granted such a permit when the Committee, or another international complaints body, has found the State party to be in breach of its treaty obligations. The Committee also notes the statement by the delegation that the State party has not participated in any extraordinary renditions and that it has not obtained or

tried to make use of diplomatic assurances in any case other than the cases concerning Mr. Agiza and Mr. Alzery. The Committee takes note of the extensive information presented by the State party on measures taken to implement the Committee's decision in *Agiza v. Sweden*, including the issuance of visas to family members and continued visits to the prison. The Committee also notes that the requests for residence permit and compensation are currently awaiting resolution. However, the Committee regrets the lack of full implementation of the key elements in this decision, in particular an in-depth investigation and prosecution of those responsible, as appropriate. It further regrets the lack of full implementation of the Views of the Human Rights Committee in *Alzery v. Sweden*, including the recommended remedies (arts. 3 and 14).

> **The State party should take all necessary measures to implement the decision of this Committee and the Views of the Human Rights Committee concerning Mr. Agiza and Mr. Alzery and provide them with fair and adequate compensation. Furthermore, the State party should undertake an in-depth investigation into the reasons for their expulsion and prosecute those responsible, as appropriate. Finally, the State party should take effective measures to ensure that it complies fully with its obligations under article 3 of the Convention in order to prevent similar incidents from occurring in the future.**

(14) The Committee notes that the State party is in the process of negotiating a Memorandum of Understanding with the Government of Afghanistan in connection with its participation in the International Security Assistance Force (ISAF) operation (art. 3).

> **It is the Committee's constant view, as reiterated in its general comment on article 2 of the Convention (CAT/C/GC/2) that article 3 of the Convention and its obligation of non-refoulement apply to a State party's military forces, wherever situated, where they exercise effective control, de jure or de facto, over an individual. With regard to the possible transfer of detainees within a State party's effective custody to the custody of any other State, the State party should ensure that it complies fully with article 3 of the Convention in all circumstances.**

### Training

(15) The Committee notes with appreciation the detailed information provided by the State party on training programmes for, inter alia, the police forces, the Prosecution Authority and the Prison and Probation Administration, including prison staff. The Committee also welcomes the information provided on the special police tactics, including employment of non-violent means and crowd control. However, the Committee regrets the limited information provided on monitoring and evaluation of such training programmes and the lack of available information on the impact of the training conducted for law enforcement officials and prison staff, and how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

> **The State party should further develop educational programmes to ensure that all law enforcement officials and prison staff are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All relevant personnel, including Swedish embassy staff, should receive specific training on torture and ill-treatment and the Committee recommends that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of such training. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.**

### Imposition of restrictions on remand prisoners

(16) The Committee expresses its concern at information that between 40 to 50 per cent of remand prisoners are subjected to restrictions and that remand prisoners are currently unable to effectively challenge and appeal decisions to impose or maintain specific restrictions. The Committee also regrets the lack of official statistics on the use of such restrictions. However, the Committee notes that a proposal of the special investigator appointed by the Government, which includes regulatory changes aimed at securing a uniform and legally secure use of restrictions, is currently under consideration in the Ministry of Justice (arts. 2, 11 and 16).

**The State party should take appropriate measures to further reduce the imposition of restrictions as well as their length. The Committee is of the view that restrictions should always be based on concrete grounds, individualized and proportionate to the case at hand and lifted immediately when the grounds for their imposition no longer exist. As an exceptional measure, they should be interpreted narrowly, and in case of doubt, in favour of the individuals. Furthermore, the Committee notes that the Government has recently enjoined the Prosecution Authority to account, by the end of the year, for the number of persons in detention in 2008 and the number of cases where restrictions have been imposed and encourages the State party to submit this information to the Committee.**

### Coercive measures, including physical restraints and isolation

(17) The Committee regrets that the State party could not provide aggregated data on the average length of the use of physical restraints or isolation in psychiatric institutions and hospitals. However, it notes that the National Board of Health and Welfare is currently preparing an on-line register for compulsory mental care and forensic mental care with the aim, inter alia, to produce reliable statistical data on the use of coercive measures (arts. 11 and 16).

**The State party should review the use of physical restraints and further limit the use of solitary confinement as a measure of last resort and for as short a time as possible under strict supervision. The State party is encouraged to complete the on-line register as soon as possible.**

### Prompt and impartial investigations

(18) The Committee notes that the National Police-related Crimes Unit was established in 2005 and that the 2007 report "Summa Summarum - an independent authority for investigations of criminal allegations against police officers and prosecutors?" did not recommend the establishment of an independent authority for such investigations but rather a more clearly separated unit for internal investigations within the police. However, the Committee is concerned at information that the basic precepts of independence, effectiveness and promptness may not have been observed in all cases of complaints of police misconduct (arts. 12 and 16).

**The State party should strengthen its measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. The Committee is of the view that such investigations should not be undertaken by or under the authority of the police, but by an independent body.**

(19) The Committee notes that Swedish courts have jurisdiction with regard to all crimes committed by Swedish troops deployed abroad in the course of duty, regardless of the law of the state where the criminal act may have been committed. The Committee also takes note of the information provided by the delegation in respect of the incident that took place during the international UN/EUFOR Operation Artemis in the Congo in 2003. However, the Committee expresses its concern at allegations that a prisoner was tortured by French soldiers in the presence of Swedish soldiers and that the State party did not call for a prompt and impartial investigation in this respect (arts. 5 and 12).

**The State party should call for prompt and impartial investigations if it receives information indicating that there are reasonable grounds to believe that acts of torture or ill-treatment have been committed while conducting its international operations. The State party should also ensure that Swedish troops are instructed to report such incidents and take other measures, as appropriate.**

### Compensation and rehabilitation

(20) While noting information on treatment and social rehabilitation services provided to, inter alia, victims of torture and ill-treatment, the Committee is concerned that, as these services are conducted in many different ways, it is difficult to get an overview of the actual situation, including possible regional discrepancies. In this respect, the Committee regrets the lack of aggregate information on how often these different kinds of services have been utilized or on what resources are allocated to victims of torture or ill-treatment for psychiatric services. Furthermore, the Committee is concerned that there has been no case decided by or is currently pending before any Swedish courts concerning claims for compensation or other kinds of redress to victims of torture (art. 14).

**The State party should continue to strengthen its efforts in respect of compensation, redress and rehabilitation in order to provide victims with redress and fair and adequate compensation, including the means for as full rehabilitation as possible.**

**Rights of vulnerable groups and discrimination**

(21) The Committee notes that the 2001 action plan against racism, xenophobia, homophobia and discrimination has been incorporated in the new human rights action plan for the period 2006-2009 and it welcomes the recent initiative of the Government to merge the current anti-discrimination legislation into one single Anti-Discrimination Act that will cover seven grounds of discrimination.[2] However, the Committee expresses its concern at reports of continued discrimination of vulnerable groups, in particular the Roma. The Committee is also concerned at reports of hate crimes in the State party, including a high number of racial hate crimes (arts. 2, 12, 13 and 16).

**The State party should intensify its efforts to combat discrimination against vulnerable groups, including the Roma. In this respect, the State party should take further steps to combat racial discrimination, xenophobia and related violence as well as hate crimes, to ensure prompt, impartial and thorough investigations into all such motivated violence and prosecute and to punish perpetrators in all cases with appropriate penalties which take into account the grave nature of their acts.**

**Prohibition of any statement obtained under torture from being invoked as evidence**

(22) The Committee takes note of information provided that the Swedish penal and procedural system, which is based on the principle of free examination of evidence, contains several provisions, including procedural safeguards, to prevent public officials from using torture in criminal investigation. The Committee, however, expresses its concern at the fact that Swedish law does not contain specific provisions ensuring that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, as required by article 15 of the Convention.

**The State party should ensure that legislation concerning evidence to be adduced in judicial proceedings is brought in line with the provisions of article 15 of the Convention so as to exclude explicitly any evidence obtained as a result of torture.**

**Domestic violence**

(23) The Committee, while noting various measures undertaken by the State party, including the 2007 Action Plan on Men's Violence against Women, expresses its concern about the persistence of violence against women and children, including domestic violence and crimes committed against women and children in the name of honour. The Committee further regrets the lack of State-wide statistics on domestic violence, including statistical data on complaints, prosecutions and sentences. Furthermore, the Committee is concerned at information that the provision of social services varies between municipalities and that some municipalities are unable to offer sheltered housing to all women victims of violence, including women with special needs such as women with disabilities (arts. 2, 12 and 16).

**The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence and crimes committed against women and children in the name of honour. The State party should also monitor the provision of social services with a view to ensuring the availability of a sufficient number of shelters, equipped to accommodate women with special needs, including women with disabilities, throughout the territory of the State party, and their adequate financing.**

---

[2] Discrimination on the grounds of sex, sexual orientation, gender identity, ethnic background, religion or other religious beliefs, disability, and age.

### Data collection

(24) While noting that some statistics have been provided, the Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, violence against women and children, including domestic violence and crimes committed against women and children in the name of honour, as well as compensation and rehabilitation (arts. 12, 13 and 16).

> **The State party should establish an effective system to gather all statistical data relevant to monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, violence against women and children, including domestic violence and crimes committed against women and children in the name of honour, as well as on compensation and rehabilitation provided to the victims. The Committee recognizes the sensitive implications of gathering personal data and emphasizes that appropriate measures should be taken to ensure that such data collected is not abused.**

### National preventive mechanisms under the Optional Protocol to the Convention

(25) The Committee notes that the State party has designated the Parliamentary Ombudsman's Institution and the Chancellor of Justice as its national preventive mechanisms (NPMs) under the Optional Protocol. However, it expresses its concern at the fact that these institutions are reactive, not preventive, in nature, that neither organizations have multi-professional staff and that the Government has not allocated any additional resources which would allow these institutions to deal with the new tasks, as it has been brought to the Committee's attention by the NPMs themselves.

> **The Committee recommends that the State party should re-examine the decision taken by the Government of Sweden to designate the Parliamentary Ombudsman's Institution and the Chancellor of Justice as the Swedish NPMs or, alternatively, ensure their effective functioning as preventive mechanisms by, inter alia, allocating the necessary resources in order to ensure that it meets the requirements under the Optional Protocol.**

(26) The Committee notes with appreciation the State party's previous contributions to the United Nations Voluntary Fund for Victims of Torture and encourages it to resume its support.

(27) The Committee invites the State party to consider ratifying the United Nations human rights treaties to which it is not yet a party, i.e. the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the International Convention for the Protection of All Persons from Enforced Disappearance.

(28) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies (see HRI/GEN/2/Rev.4).

(29) The State party is encouraged to disseminate widely the reports submitted by Sweden to the Committee and the concluding observations and summary records, in appropriate languages, through official websites, the media and non-governmental organizations.

(30) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 11, 13, 16 and 17 above.

(31) The State party is invited to submit its seventh periodic report by 30 June 2012.

## 44. The former Yugoslav Republic of Macedonia

(1) The Committee against Torture considered the second periodic report of the former Yugoslav Republic of Macedonia (CAT/C/MKD/2) at its 822nd and 825th meetings (CAT/C/SR.822 and 825), held on 7 and 8 May 2008, and adopted, at its 832nd and 833rd meetings (CAT/C/SR.832 and 833), held on 15 May 2008, the following concluding observations.

### A. Introduction

(2) The Committee welcomes the submission of the second periodic report of the former Yugoslav Republic of Macedonia as well as the replies to the list of issues which provided additional information on the legislative, administrative, judicial and other measures taken by the State party for the implementation of the Convention. The Committee also notes with satisfaction the constructive dialogue held with a high-level and multisectoral delegation.

### B. Positive aspects

(3) The Committee welcomes:

(a) The amendments in the Criminal Code in 2004, and notably the incorporation of the crime of torture in domestic legislation;

(b) The adoption of an action plan to implement the last recommendations of the European Committee on the Prevention of Torture, after its last visit in 2006;

(c) The implementation of a strategy to prevent and combat domestic violence;

(d) The introduction of a separate offence of trafficking in persons at the beginning of 2008;

(e) The wide-ranging reform aimed at improving the judicial system, such as the Law on the Judicial Council, the Law on the Academy for Training of Judges and Public Prosecutors and the Law on the Public Prosecutor's Office.

(4) The Committee welcomes the State party's ratification of the Rome Statute of the International Criminal Court on 6 March 2002.

### C. Main issues of concerns and recommendations

#### Article 2

(5) The Committee is concerned that the inclusion in the scope of the Amnesty Law adopted in 2002 of "all criminal acts related to the 2001 conflict", may create the conditions for impunity for serious violations of international human rights and humanitarian law, including violations of the Convention against Torture.

**The Committee, as recalled in its general comment No. 2, considers that amnesties or other impediments which preclude prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment may violate the principle of non-derogability. In this respect, the State party should ensure that serious violations of international human rights and humanitarian law are not included in any amnesty and are thoroughly investigated and, if appropriate, prosecuted and sanctioned.**

(6) The Committee, while noting the current legislative efforts to strengthen the independence of the Public Prosecution Office, is concerned at its inadequate functioning, in particular when it comes to promptly investigate allegations of torture and other cruel, inhuman or degrading treatment. This concern has also been articulated in various decisions of the European Court of Human Rights.

**The State party should ensure the independence and the effective functioning of the Public Prosecution Office as to ensure, inter alia, that allegations of torture and cruel, inhuman or degrading treatment are promptly and impartially investigated and, if appropriate, prosecuted and sanctioned. To this end, the State party should swiftly complete the reform process aimed at strengthening the Office's independence and effectiveness.**

(7) The Committee notes that the Sector for Internal Control and Professional Standards (SICPS) within the Ministry of Interior is the body mandated to monitor the conduct of the police, but is concerned that an independent and external oversight mechanism for acts committed by the police is lacking. In this respect, while welcoming the adoption of a law strengthening the Office of the Ombudsman in 2003, it is concerned that this Office has still limited functions, and that its decisions are not binding.

**The State party should intensify its efforts to establish a system of independent and impartial monitoring to investigate and monitor alleged police misconduct. In this respect, the State party should consider strengthening and extending the mandate of the Ombudsman, including the capacity to investigate acts committed by police officers. Furthermore, cooperation between the SICPS and the Ombudsman should be improved and adequate follow-up should be given to the Ombudsman's recommendations by all relevant authorities.**

### Article 3

(8) The Committee is concerned at the inadequate functioning of the system for processing and determining asylum claims, especially with respect to those claims channelled through the so-called "accelerated procedure".

**The State party should ensure that a thorough review of each individual case is provided for asylum claims. In this respect, the State party should ensure that effective remedies are available to challenge the decision not to grant asylum, especially when the claim is channelled through an accelerated procedure. Such remedies should have in any case the effect of suspending the execution of the above decision, i.e. the expulsion or deportation.**

(9) The Committee takes note of the State party's position that the SICPS has not found any wrongdoing of any officials of the Ministry of Interior or any other authority in the well-known case of Mr. Khaled El-Masri. However, - noting the concerns expressed by various international bodies, including the Council of Europe Committee on Legal Affairs and Human Rights on the matter, - the Committee is concerned that the events surrounding the arrest, detention and transfer to a third country of Mr. El-Masri have not been fully clarified.

**The Committee recalls its position that responses to the threat of international terrorism adopted by States parties to the Convention must be in conformity with the obligations undertaken by them in ratifying it. In this respect, the State party should ensure that a new thorough investigation is undertaken in order to assess whether the treatment of Mr. El Masri has been in compliance with the Convention and other international human rights standards.**

### Article 4

(10) The Committee notes with concern the data showing that very low penalties have been imposed on persons convicted for the crimes of torture (article 142 of the Criminal Code) and ill-treatment while carrying out official duty (article 143 of the Criminal Code) (arts. 4 and 16).

**The State party should ensure that the acts of torture are punished by appropriate penalties which take into account their grave nature. The Committee, underlining that the conditions that give rise to cruel, inhuman or degrading treatment or punishment frequently facilitate torture and that, therefore, the measures required to prevent torture must be applied to prevent cruel, inhuman or degrading treatment or punishment, believes that appropriate penalties should likewise be applied to acts of cruel, inhuman or degrading treatment.**

### Article 5

(11) The Committee is concerned that, in case of acts of torture committed abroad, the State party may only establish its jurisdiction thereto when the alleged offender is present in its territory if the punishment foreseen for the offences in the country where they have been committed is, at least, of five years of imprisonment. In this respect, the Committee is concerned that this may create situations of impunity, in cases where the country in which acts of torture are committed is not a party to the Convention, does not have a specific offence of torture in its legislation, or sanctions it with penalties less than five years of duration.

**The State party should consider abolishing the double criminality requirement for the crime of torture and apply the *aut dedere aut judicare* principle when an alleged offender for acts of torture committed abroad is present in its territory, in accordance with article 5, paragraph 2, of the Convention.**

### Articles 6, 7, 8 and 9

(12) The Committee, while welcoming the State party's ratification of the Rome Statute of the International Criminal Court, regrets the bilateral agreement concluded with another State party to the Convention aimed at exempting the latter's nationals present in the State party's territory from being extradited to the International Criminal Court for crimes within the jurisdiction of the Court, including torture.

**The State party should, in accordance with article 6 and 8, consider reviewing the relevant terms of those agreements which prevent the nationals of certain States who are on the territory of the former Yugoslav Republic of Macedonia from being brought before the International Criminal Court.**

(13) The Committee takes note of the information received by the State party with respect to the developments on the investigations and prosecution of the cases of enforced disappearances occurred during the conflict in 2001.

**The Committee recommends that the State party complete a thorough investigation of the above-mentioned cases of disappearances, including those related to the four cases referred back to the State party from the International Criminal Tribunal for the Former Yugoslavia, and prosecute and punish the perpetrators of this crime. The State party should make the results of these investigations public as well as provide information in this respect to the Committee (arts. 6, 7, 8, 9, 12 and 13).**

### Article 10

(14) The Committee notes the State party's efforts with respect to education and information regarding the prohibition of torture, including the training organized in cooperation with the OSCE for 5,500 police officers on "Police, Human Rights and Freedoms" in 2004 and 2005 as well as the plan to establish by the end of 2008 a new permanent training centre for prison staff. However, the Committee is concerned that training programmes for medical personnel for the identification and documentation of cases of torture, as well as for the rehabilitation of victims, seem to be lacking. Likewise, training to develop a more gender sensitive approach both in legal and medical institutions is inadequate.

**The State party should:**

**(a) Ensure that education and training of all law enforcement personnel, are conducted on a regular basis;**

**(b) Include in training modules on interrogation rules, instructions and methods, and specific training for medical doctors on how to identify signs of torture, and cruel, inhuman or degrading treatment;**

**(c) Regularly evaluate the training provided to its law-enforcement officials, as well as, ensure regular and independent monitoring of their conduct;**

**(d) Strengthen its efforts to implement a gender sensitive approach for the training of those involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.**

### Article 11

(15) The Committee, while noting the extensive reform planned for the penitentiary system, including the construction of new facilities and the renovation of the existing ones, is concerned about the current material conditions of detention and the problems of overcrowding in the places of deprivation of liberty.

**The State party should ensure the urgent implementation of the penitentiary system reform, including the duly establishment of a new network of penitentiary institutions as envisaged in the Law on Execution of Sanctions. The State party should also improve the material conditions of detention in places of deprivation of liberty, in particular with respect to hygienic conditions and medical care.**

### Articles 12, 13 and 14

(16) The Committee is concerned about allegations of torture or cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel and notes with concern a lack of prompt and effective investigations and prosecutions in this respect (see also paragraph 5 above). In particular, the Committee is concerned at allegations reporting that the most serious abuses would be committed by a special unit of the police named "Alfi", mandated to counter urban crimes and work in plain clothes. In this respect, the Committee takes note of the information received by the delegation that the "Alfi" unit is going to terminate its activities soon.

**The State party should ensure that:**

**(a) All allegations of acts of torture or cruel, inhuman or degrading treatment or punishment committed by law enforcement officials, - including those committed by members of the "Alfi" unit, - are investigated promptly, independently and impartially and, when appropriate, prosecuted and punished;**

**(b) Laws and the regulations relating to the use of force and weapons by law enforcement officials are consistent with internationally recognized standards;**

**(c) Victims of torture or ill-treatment have the right to obtain redress and fair and adequate compensation, as provided for in article 14 of the Convention.**

(17) The Committee notes with concern the State party's assertion that there are no services available in the State party to deal specifically with the treatment of trauma and other forms of rehabilitation for torture victims.

**The State party should ensure that appropriate services are available for the rehabilitation of victims of torture.**

### Article 15

(18) The Committee is concerned that the State party lacks clear legislation totally excluding admission of evidence obtained as a result of torture. Furthermore, the Committee is concerned over reports indicating that in practice evidence obtained under ill-treatment has been used in criminal proceedings.

**The State party should prohibit, in the legislation as well as in practice, admissibility and use in criminal proceedings of any evidence obtained as a result of torture or ill-treatment, in compliance with article 15 of the Convention.**

## Article 16

(19) The Committee, while noting various measures undertaken by the State party, including the implementation of a strategy to prevent domestic violence and the inclusion, in 2004, of a separate crime of domestic violence in the Criminal Code, expresses its concern about the persistence of violence against women and children, including domestic violence. While appreciating the State party's intention to amend the elements of crimes of rape by abolishing the requirements of both penetration and active resistance by the victim, it is concerned at the low numbers of investigations and prosecutions of cases of domestic violence.

> **The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence, and ensure adequate implementation of the national strategy to prevent domestic violence. The State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for officials (law enforcement agencies, judges, lawyers and social workers) who are in direct contact with the victims as well as for the public at large.**

(20) The Committee notes with concern reports of intolerance and hatred towards ethnic minorities, especially Roma. In this respect, the Committee is concerned about information showing that instances of ill-treatment by law enforcement officials, especially the police, often involve persons belonging to ethnic minorities.

> **The Committee recalls that the protection of certain minorities or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. In this respect, the State party should strengthen its efforts to combat ill-treatment of and discrimination against persons belonging to ethnic minorities, in particular Roma, including by ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and information campaign constantly communicate the message that discrimination and violence will not be tolerated and will be sanctioned accordingly.**

(21) The Committee notes that corporal punishment of children is not explicitly prohibited in all settings and it is a common and accepted means of childrearing.

> **The State party, taking also into account the recommendation in the United Nations study on violence against children, should adopt and implement legislation prohibiting corporal punishment in all settings, supported by the necessary awareness-raising and public education measures.**

(22) The Committee recognizes the efforts undertaken to combat human trafficking, including the recent introduction of a separate offence of trafficking, but it is still concerned that trafficking in women and girls, especially for the purpose of sexual exploitation, is a serious problem in the State party, and that recovery and reintegration services are insufficient.

> **The State party should continue to prosecute and punish trafficking in persons, especially women and children, and intensify its efforts to provide recovery and reintegration services to victims. The State party should also conduct nationwide awareness-raising campaigns and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation.**

(23) The Committee notes with appreciation the State party's statement that a draft Bill on ratification of the Optional Protocol to the Convention is currently under Governmental review. In this respect, it encourages the State party to ratify the Optional Protocol to the Convention in order to strengthen the prevention against torture.

(24) The Committee invites the State party to become a party to the following human rights treaties, namely: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance.

(25) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials; on the related investigations, prosecutions, and penal or disciplinary sanctions; and on pretrial detainees and convicted prisoners. Information is further requested on compensation and rehabilitation provided to the victims.

(26) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

(27) The Committee requests the State party to provide, within one year, information on response to the Committee's recommendations contained in paragraphs 6, 8, 13 and 20 above.

(28) The State party is encouraged to disseminate widely the reports submitted to the Committee and the concluding observations and summary records of the Committee through official websites, to the media and non-governmental organizations.

(29) The State party is invited to submit its next periodic report, which will be considered as the third periodic report, by 30 June 2012 at the latest.

## 45. **Zambia**

(1) The Committee against Torture ("the Committee") considered the second periodic report of Zambia (CAT/C/ZMB/2) at its 824th and 827th meetings, held on 8 and 9 May 2008 (CAT/C/SR.824 and 827), and adopted, at its 831st meeting and 832nd meeting on 14 and 15 May 2008 (CAT/C/SR.831 and 832), the following Concluding observations.

### A. Introduction

(2) The Committee welcomes the report of Zambia, and the open and frank dialogue held with the high-level delegation, as well as the replies to the questions raised during the dialogue. The Committee also welcomes the efforts made by the State party to acknowledge the challenges and difficulties faced in the implementation of the Convention. The Committee regrets, however, that the State party was unable to implement all the recommendations made by the Committee during the consideration of the initial report of Zambia, in 2001 (A/57/44, paras. 59 to 67).

### Positive aspects

(3) The Committee welcomes the following positive developments:

(a) The ratification of the Rome Statute of the International Criminal Court on 13 November 2002;

(b) The ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime on 24 April 2005,

(c) The establishment of the National Constitutional Conference (Act No. 19 of 2007) mandated to undertake a constitutional reform process;

(d) The abolition of corporal punishment through the enactment of the Criminal Procedure Code (Amendment) Act No. 9 of 2003, the Penal Code (Amendment) Act No. 10 of 2003, the Education Act (Amendment) Act No. 11 of 2003, and the Prisons (Amendment) Act No. 16 of 2004;

(e) The Prisons (Amendment) Act No. 16 of 2004 which provides for the establishment of a Health Care Service within prisons; the release of prisoners on parole by the Commissioner of Prisons on the recommendation of the Parole Board, and the discharge from prison of any terminally ill prisoner upon approval of the Minister;

(f) The enactment of Guidelines in 2003 by the Ministry of Home Affaires which stipulate standards for the interrogation of suspects and the treatment of persons in custody; and

(g) The creation of the Zambia Police Forensic Laboratory, available to officers in Lusaka, which offers police investigators qualitative scientific methods of investigating crime rather than relying on confession statements.

## B. Subjects of concern and recommendations

### Definition of torture

(4) The Committee reiterates its concern expressed in its previous conclusions and recommendations (A/57/44, para. 64) with regard to the fact that the State party has neither incorporated the Convention into its legislation nor introduced corresponding provisions in respect of several articles, in particular:

(a) The definition of torture (art. 1);

(b) The criminalization of torture (art. 4);

(c) The prohibition of cruel, inhuman or degrading treatment in the penal system (art. 16);

(d) Recognition of torture as an extraditable offence (art. 8);

(e) Systematic review of interrogation rules (art. 11);

(f) Jurisdiction over acts of torture, including those committed abroad (art. 5).

**The Committee reiterates its previous recommendations and urges the State party to speedily incorporate the Convention into its legal system and include in its criminal legislation and other provisions criminalizing acts of torture a definition of torture, that covers all the elements contained in article 1 of the Convention and appropriate penalties which take into account the grave nature of such acts.**

### Absolute prohibition of torture

(5) The Committee is concerned that article 25 of the State party's Constitution does not clearly stipulate the absolute prohibition of torture regardless of state of war or public emergency (art. 2).

**The State party should incorporate in its Constitution and other laws the principle of an absolute prohibition of torture whereby no exceptional circumstances whatsoever may be invoked to justify it.**

### Non-refoulement and extradition

(6) The Committee welcomes the cooperation between the State party and UNHCR which aims to strengthen the State party's capacity to protect refugees and notes with appreciation the positive steps already taken by it to recognize the need to replace the 1970 Refugees Control Act by a revised Refugee Bill. It is concerned, however, that the Refugee Control Act currently in force, does not explicitly provide for protection against non-refoulement and that the current expulsion, return and extradition procedures and practices may expose individuals to the risk of torture (art. 3).

**The State party should ensure that the new Refugee Bill and the Immigration and Deportation Act fully comply with article 3 of the Convention. The State party should also provide the Committee with detailed information on cases of denial of extradition, return or expulsion due to the risk that the person might be subjected to torture, ill-treatment or the death penalty upon return.**

A/63/41

United Nations

# Report of the Committee on the Rights of the Child

## General Assembly

Official Records
Sixty-third Session
Supplement No. 41

**General Assembly**
Official Records
Sixty-third Session
Supplement No. 41

# Report of the Committee on the Rights of the Child

**United Nations • New York, 2008**

## Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 1020-1823

[16 July 2008]

## CONTENTS

| | | Paragraphs | Page |
|---|---|---|---|
| I. | ORGANIZATIONAL AND OTHER MATTERS | 1 - 6 | 1 |
| | A. States parties to the Convention | 1 - 2 | 1 |
| | B. Sessions of the Committee | 3 | 1 |
| | C. Membership and officers of the Committee | 4 - 5 | 1 |
| | D. Adoption of the report | 6 | 2 |
| II. | REPORTS BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION, ARTICLE 8 OF THE OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT AND ARTICLE 12 OF THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY | 7 - 27 | 2 |
| | A. Submission of reports | 7 - 9 | 2 |
| | B. Consideration of reports | 10 - 11 | 2 |
| | C. Progress achieved: trends and challenges of the implementation process | 12 - 27 | 5 |
| III. | OVERVIEW OF THE OTHER ACTIVITIES OF THE COMMITTEE | 28 - 41 | 9 |
| | A. Methods of work | 28 - 32 | 9 |
| | B. International cooperation and solidarity for the implementation of the Convention | 33 - 39 | 10 |
| | C. General thematic discussions | 40 - 41 | 14 |

### Annexes

| | | Page |
|---|---|---|
| I. | Membership of the Committee on the Rights of the Child | 15 |
| II. | General comment No. 8 (2006) | 17 |
| III. | General comment No. 9 (2006) | 30 |
| IV. | General comment No. 10 (2007) | 53 |

# I. ORGANIZATIONAL AND OTHER MATTERS

## A. States parties to the Convention

1. As at 1 February 2008, the closing date of the forty-seventh session of the Committee on the Rights of the Child, there were 193 States parties to the Convention on the Rights of the Child. An updated list of States that have signed, ratified or acceded to the Convention can be consulted at www.ohchr.org or untreaty.un.org.

2. As at the same date, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict had been ratified or acceded to by 119 States parties and signed by 122 States. Also, as at the same date, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography had been ratified or acceded to by 124 States parties and signed by 115 States. An updated list of States that have signed, ratified or acceded to the two Optional Protocols can be consulted at www.ohchr.org.

## B. Sessions of the Committee

3. The Committee held six sessions since the adoption of its previous biennial report (A/61/41): forty-second session (15 May-2 June 2006); forty-third session (11-29 September 2006); forty-fourth session (15 January-2 February 2007); forty-fifth session (21 May-8 June 2007); forty-sixth session (17 September-5 October 2007); forty-seventh session (14 January-1 February 2008). Subsequent to each session, the Committee issues a report of the session containing the full text of all concluding observations adopted as well as any decisions and recommendations (including those arising from a day of general discussion) or general comments adopted. The reports on the aforementioned sessions are contained in documents CRC/C/42/3, CRC/C/43/3, CRC/C/44/3, CRC/C/45/3, CRC/C/46/3 and CRC/C/47/3, respectively.

## C. Membership and officers of the Committee

4. From the forty-second to the forty-fourth sessions, the Committee maintained the same members and officers noted in its previous report to the General Assembly (A/61/41, annex I). On 23 February 2005, the Tenth Meeting of States parties to the Convention was convened to elect new members to the Committee. Subsequently, the Committee elected a new set of officers to reflect its new membership.

5. In accordance with article 43 of the Convention, the Eleventh Meeting of States parties to the Convention was convened on 21 February 2007 at United Nations Headquarters. The following nine members of the Committee were elected or re-elected for a term of four years beginning on 28 February 2007: Ms. Agnes Akosua Aidoo; Mr. Luigi Citarella; Mr. Kamel Filali; Ms. Maria Herczog; Ms. Moushira Khattab; Mr. Hatem Kotrane; Mr. Lothar Krappmann; Ms. Rosa Maria Ortiz; Mr. Dainius Puras. The list of the members of the Committee, with an indication of their term of office, appears in annex I to the present report. Annex I also indicates the officers elected at the forty-fifth session of the Committee, and the subsequent changes that occurred at the forty-sixth (see also the reports of the forty-fifth and forty-sixth sessions, CRC/C/45/3 and CRC/C/46/3).

### D. Adoption of the report

6. At its 1313th meeting, held on 1 February 2008, the Committee considered the draft of its ninth biennial report to the General Assembly, covering its activities from the forty-second to forty-seventh sessions. The report was adopted unanimously by the Committee.

## II. REPORTS BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION, ARTICLE 8 OF THE OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT AND ARTICLE 12 OF THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

### A. Submission of reports

7. In order to maintain an up-to-date register of status of submission of reports and adoption of related concluding observations, prior to each session the Committee issues a comprehensive document outlining the number of reports submitted to date. This document, entitled "Submission of reports by States parties", also contains relevant information on the exceptional measures taken to address late or non-reporting. The latest version of this report was issued prior to the forty-seventh session of the Committee on 26 November 2007 in document CRC/C/47/2.

8. As of 27 December 2007, the Committee had received 342 reports pursuant to article 44 of the Convention, including 193 initial, 115 second periodic, 29 third periodic and 6 fourth periodic reports, as well as 49 initial State party reports under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and 35 initial reports under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. For the full list of these reports, see CRC/C/47/2, annexes I, II and III, respectively.

9. During the period under consideration, the Committee received from a number of States parties (France, Senegal, Syrian Arab Republic, Turkmenistan, Uzbekistan) additional follow-up information submitted in accordance with the recommendations made by the Committee in its concluding observations.

### B. Consideration of reports

10. During its forty-second to forty-seventh sessions, the Committee considered 33 initial and periodic reports under the Convention, 27 initial reports under the Optional Protocol on the involvement of children in armed conflict and 19 initial reports under the Optional Protocol on the sale of children, child prostitution and child pornography.

11. The following table indicates, by session, the reports of States parties considered by the Committee during the period covered by the present report. It further provides the document symbol of the session report in which the concluding observations of the Committee have been published, the symbols of the reports of States parties considered by the Committee and the document symbol of the concluding observations published as a separate document.

| | *State party report* | *Concluding observations* |
|---|---|---|
| **Forty-second session, 15 May-2 June 2006 (sessional report CRC/C/42/3)** | | |
| **Belgium** | **CRC/C/OPAC/BEL/1** | **CRC/C/OPAC/BEL/CO/1** |
| **Canada** | **CRC/C/OPAC/CAN/1** | **CRC/C/OPAC/CAN/CO/1** |
| **Czech Republic** | **CRC/C/OPAC/CZE/1** | **CRC/C/OPAC/CZE/CO/1** |
| **Colombia, third** | **CRC/C/129/Add.6** | **CRC/C/COL/CO/3** |
| **El Salvador** | **CRC/C/OPAC/SLV/1** | **CRC/C/OPAC/SLV/CO/1** |
| **Iceland** | **CRC/C/OPSC/ISL/1** | **CRC/C/OPSC/ISL/CO/1** |
| **Iceland** | **CRC/C/OPAC/ISL/1** | **CRC/C/OPAC/ISL/CO/1** |
| **Italy** | **CRC/C/OPSA/ITA/1** | **CRC/C/OPSC/ITA/CO/1** |
| **Italy** | **CRC/C/OPAC/ITA/1** | **CRC/C/OPAC/ITA/CO/1** |
| **Latvia, second** | **CRC/C/83/Add.16** | **CRC/C/LVA/CO/2** |
| **Lebanon, third** | **CRC/C/129/Add.7** | **CRC/C/LBN/CO/3** |
| **Mexico, third** | **CRC/C/125/Add.7** | **CRC/C/MEX/CO/3** |
| **Qatar** | **CRC/C/OPSC/QAT/1** | **CRC/C/OPSC/QAT/CO/1** |
| **Turkey** | **CRC/C/OPSA/TUR/1** | **CRC/C/OPSC/TUR/CO/1** |
| **Turkmenistan, initial** | **CRC/C/TKM/1** | **CRC/C/TKM/CO/1** |
| **United Republic of Tanzania, second** | **CRC/C/70/Add.26** | **CRC/C/TZA/CO/2** |
| **Uzbekistan, second** | **CRC/C/104/Add.6** | **CRC/C/UZB/CO/2** |
| **Forty-third session, 11-29 September 2006 (sessional report CRC/C/43/3)** | | |
| **Benin, second** | **CRC/C/BEN/2** | **CRC/C/BEN/CO/2** |
| **Denmark** | **CRC/C/OPSC/DNK/1** | **CRC/C/OPSC/DNK/CO/1** |
| **Ethiopia, third** | **CRC/C/129/Add.8** | **CRC/C/ETH/CO/3** |
| **Ireland, second** | **CRC/C/IRL/2** | **CRC/C/IRL/CO/2** |
| **Jordan, third** | **CRC/C/JOR/3** | **CRC/C/JOR/CO/3** |
| **Kazakhstan** | **CRC/C/OPAC/KAZ/1** | **CRC/C/OPAC/KAZ/CO/1** |
| **Kiribati, initial** | **CRC/C/KIR/1** | **CRC/C/KIR/CO/1** |
| **Malta** | **CRC/C/OPAC/MLT/1** | **CRC/C/OPAC/MLT/CO/1** |
| **Oman, second** | **CRC/C/OMN/2** | **CRC/C/OMN/CO/2** |
| **Republic of the Congo, initial** | **CRC/C/COG/1** | **CRC/C/COG/CO/1** |
| **Samoa, initial** | **CRC/C/WSM/1** | **CRC/C/WSM/CO/1** |
| **Senegal, second** | **CRC/C/SEN/2** | **CRC/C/SEN/CO/2** |
| **Swaziland, initial** | **CRC/C/SWZ/1** | **CRC/C/SWZ/CO/1** |
| **Syrian Arab Republic** | **CRC/C/OPSC/SYR/1** | **CRC/C/OPSC/SYR/CO/1** |
| **Viet Nam** | **CRC/C/OPSC/VNM/1** | **CRC/C/OPSC/VNM/CO/1** |
| **Viet Nam** | **CRC/C/OPAC/VNM/1** | **CRC/C/OPAC/VNM/CO/1** |
| **Forty-fourth session, 15 January-2 February 2007 (sessional report CRC/C/44/3)** | | |
| **Chile, third** | **CRC/C/CHL/3** | **CRC/C/CHL/CO/3** |
| **Costa Rica** | **CRC/C/OPSC/CRI/1** | **CRC/C/OPSC/CRI/CO/1** |
| **Costa Rica** | **CRC/C/OPAC/CRI/1** | **CRC/C/OPAC/CRI/CO/1** |
| **Honduras, third** | **CRC/C/HND/3** | **CRC/C/HND/CO/3** |

| | *State party report* | *Concluding observations* |
|---|---|---|
| Kenya, second | CRC/C/KEN/2 | CRC/C/KEN/CO/2 |
| Kyrgyzstan | CRC/C/OPSC/KGZ/1 | CRC/C/OPSC/KGZ/CO/1 |
| Kyrgyzstan | CRC/C/OPAC/KGZ/1 | CRC/C/OPAC/KGZ/CO/1 |
| Mali, second | CRC/C/MLI/2 | CRC/C/MLI/CO/2 |
| Malaysia, initial | CRC/C/MYS/1 | CRC/C/MYS/CO/1 |
| Marshall Islands, second | CRC/C/93/Add.8 | CRC/C/MHL/CO/2 |
| Suriname, second | CRC/C/SUR/2 | CRC/C/SUR/CO/2 |
| Forty-fifth session, 21 May-8 June 2007 (sessional report CRC/C/45/3) | | |
| Bangladesh | CRC/C/OPSC/BGD/1 | CRC/C/OPSC/BGD/CO/1 |
| Guatemala | CRC/C/OPSC/GTM/1 | CRC/C/OPSC/GTM/CO/1 |
| Guatemala | CRC/C/OPAC/GTM/1 | CRC/C/OPAC/GTM/CO/1 |
| Kazakhstan | CRC/C/KAZ/3 | CRC/C/KAZ/CO/3 |
| Maldives, second and third | CRC/C/MDV/3 | CRC/C/MDV/CO/3 |
| Monaco | CRC/C/OPAC/MCO/1 | CRC/C/OPAC/MCO/CO/1 |
| Norway | CRC/C/OPAC/NOR/1 | CRC/C/OPAC/NOR/CO/1 |
| Slovak Republic, second | CRC/C/SVK/2 | CRC/C/SVK/CO/2 |
| Sweden | CRC/C/OPAC/SWE/1 | CRC/C/OPAC/SWE/CO/1 |
| Sudan | CRC/C/OPSC/SDN/1 | CRC/C/OPSC/SDN/CO/1 |
| Ukraine | CRC/C/OPSC/UKR/1 | CRC/C/OPSC/UKR/CO/1 |
| Uruguay, second | CRC/C/URY/2 | CRC/C/URY/CO/2 |
| Forty-sixth session, 17 September-5 October 2007 (sessional report CRC/C/46/3) | | |
| Bulgaria | CRC/C/OPSC/BGR/1 | CRC/C/OPSC/BGR/CO/1 |
| Bulgaria | CRC/C/OPAC/BGR/1 | CRC/C/OPAC/BGR/CO/1 |
| Croatia | CRC/C/OPAC/HRV/1 | CRC/C/OPAC/HRV/CO/1 |
| France | CRC/C/OPSC/FRA/1 | CRC/C/OPSC/FRA/CO/1 |
| France | CRC/C/OPAC/FRA/1 | CRC/C/OPAC/FRA/CO/1 |
| Lithuania | CRC/C/OPAC/LTU/1 | CRC/C/OPAC/LTU/CO/1 |
| Luxembourg | CRC/C/OPAC/LUX/1 | CRC/C/OPAC/LUX/CO/1 |
| Qatar | CRC/C/OPAC/QAT/1 | CRC/C/OPAC/QAT/CO/1 |
| Spain | CRC/C/OPSC/ESP/1 | CRC/C/OPSC/ESP/CO/1 |
| Spain | CRC/C/OPAC/ESP/1 | CRC/C/OPAC/ESP/CO/1 |
| Syrian Arab Republic | CRC/C/OPAC/SYR/1 | CRC/C/OPAC/SYR/CO/1 |
| Venezuela, second | CRC/C/VEN/2 | CRC/C/VEN/CO/2 |
| Forty-seventh session, 14 January-1 February 2008 (sessional report CRC/C/47/3) | | |
| Chile | CRC/C/OPSC/CHL/1 | CRC/C/OPSC/CHL/CO/1 |
| Chile | CRC/C/OPAC/CHL/1 | CRC/C/OPAC/CHL/CO/1 |
| Dominican Republic, second | CRC/C/DOM/2 | CRC/C/DOM/CO/2 |
| Germany | CRC/C/OPAC/DEU/1 | CRC/C/OPAC/DEU/CO/1 |
| Ireland | CRC/C/OPAC/IRL/1 | CRC/C/OPAC/IRL/CO/1 |
| Kuwait | CRC/C/OPSC/KWT/1 | CRC/C/OPSC/KWT/CO/1 |

| | *State party report* | *Concluding observations* |
|---|---|---|
| Kuwait | CRC/C/OPAC/KWT/1 | CRC/C/OPAC/KWT/CO/1 |
| Timor-Leste, initial | CRC/C/TLS/1 | CRC/C/TLS/CO/1 |
| Timor-Leste | CRC/C/OPSC/TLS/1 | CRC/C/OPSC/TLS/CO/1 |
| Timor-Leste | CRC/C/OPAC/TLS/1 | CRC/C/OPAC/TLS/CO/1 |

### C. Progress achieved: trends and challenges of the implementation process

12. In line with its practice regarding its annual reports, in order to assess achievements and challenges, as well as current trends in child rights, the Committee highlights a particular issue related to the implementation of child rights encountered through its monitoring activities. In this report, the Committee decided to reflect on the experience gained through its monitoring of the implementation of the Optional Protocol on the sale of children, child prostitution and child pornography.

13. The exploitative use of children in prostitution and pornography was to some extent already covered by article 34 of the Convention, which asks States parties to take all appropriate measures to prevent these unlawful activities. Furthermore, article 35 deals with the abduction, sale of, and traffic in children.

14. Building on the important legal framework established by the Convention to deal with such situations, discussion within the United Nation system on issues related to the commercial sexual exploitation of children intensified during the 1990s with the establishment of the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography, the First World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in 1996, and the Second World Congress, held in Yokohama, Japan, in December 2001. Already in 1994, the Commission on Human Rights had decided to establish an open-ended working group to prepare guidelines for a possible draft optional protocol to the Convention on the sale of children, child prostitution and child pornography.[1] Despite some resistance from different stakeholders, who would have preferred strengthening the implementation of the existing instruments rather than having an additional treaty focusing on similar issues, the work of the open-ended working group continued and, on 25 May 2000, the General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

15. The Optional Protocol entered into force on 18 January 2002. As of 1 February 2008, the closing date of the forty-seventh session of the Committee, 124 States were parties to the Optional Protocol and another 33 had signed it. The Committee has considered 24 reports under this Protocol, 19 from its forty-second to forty-seventh sessions.[2] In the same period, the

---

[1] See Commission on Human Rights resolution 1994/90 of 9 March 1994.

[2] In the period between its forty-second and forty-seventh sessions, the Committee considered the initial reports under the Optional Protocol of the following countries (in alphabetical order): Bangladesh, Bulgaria, Chile, Costa Rica, Denmark, France, Guatemala, Iceland, Italy, Kuwait, Kyrgyzstan, Qatar, Spain, Sudan, Syrian Arab Republic, Timor-Leste, Turkey, Ukraine and Viet Nam.

Committee has also raised issues related to the sale of children, child prostitution and child pornography during the consideration of State party reports under the Convention, usually under the headings "sexual exploitation and trafficking" or "sale and traffic" in the section devoted to special protection measures.

16. At the same time, the Special Rapporteur of the Human Rights Council on the sale of children, child prostitution and child pornography has continued to do important work in raising awareness of these issues, focusing in the last two years in particular on the issue of "demand for sexual services deriving from exploitation" and on the "sale of children's organs". Furthermore, with respect to activities undertaken at the global level, preparation is ongoing for the Third World Congress against Commercial Sexual Exploitation of Children, which will take place in Brazil in late 2008. This will be, after Stockholm (1996) and Yokohama (2001), the third global meeting of States, non-governmental organizations (NGOs), international organizations, academics, media and individuals convened to map out the programme of action that must be taken to combat commercial sexual exploitation of children.

17. Since the Committee has developed most of its jurisprudence under the Optional Protocol during this reporting period, it is of the opinion that it is particularly timely to review its own experience, including by outlining the main challenges faced, and concerns raised, during the consideration of the reports of States parties.

### Challenges and concerns

18. One challenge faced by the Committee during these first years of experience in analysing reports under the Optional Protocol on the sale of children, child prostitution and child pornography concerns the legal interpretation of some of the definitions and provisions of the Protocol. One example in this respect comes from the tendency of the States parties to classify sale of children with other illegal activities, and notably with trafficking in children. This may be perhaps the reason why much national legislation lacks specific provisions covering sale of children, since States parties consider this act covered if they have legislative provisions covering all forms of trafficking. However, the Committee has always been very clear in clarifying that, while trafficking is very relevant for this Optional Protocol (it is also mentioned in its preamble) the activities covered in article 3, paragraph 1 (a), of the Optional Protocol are different from trafficking and the two terms should not be used interchangeably. Another example is the extensive reference made to sexual abuse, in particular within the family, in many reports of States parties, which, in fact, is not within the scope of the Optional Protocol.

19. Further elements warranting reflection concern the identification of issues covered by the Optional Protocol and therefore within the mandate of the Committee. In this respect, it is interesting to highlight the jurisprudence of the Committee regarding two specific unlawful activities that have come under its consideration, i.e. the issues of the use of children in camel racing and the forced or compulsory recruitment of children for use in armed conflict.

---

At its forty-third session (September 2006), the Committee also adopted revised guidelines regarding initial reports to be submitted under article 12 of the Optional Protocol.

The Committee believes that both cases can be considered in the context of sale of children for engagement of the child in forced labour under article 3, paragraph 1 (a) (i) (c), of the Optional Protocol.

20. With respect to the recruitment of children in armed conflict (which is also relevant in the context of the Optional Protocol on the involvement of children in armed conflict), the Committee has considered this issue during the review of the initial report of a State party, when it noted that recruitment of children continued to occur in the country, including with the promise of or in exchange for money, goods or services[3] and recommended that the State party take all necessary measures to prevent, prohibit and punish "any act or transaction, which include the offering, delivering or accepting a child, whereby a child is transferred by any person or group of persons to another for the purpose of recruitment in armed conflict".[4]

21. As for the use of children as jockeys in camel racing, the Committee considers that this activity, being harmful to the health, safety and morals of children, meets all the elements of the worst forms of child labour. Accordingly, the Committee has taken the position to tackle this issue whenever necessary within the context of sale for the purpose of the engagement of the child in forced labour.[5]

22. While it may be argued that, in both cases mentioned above, the coercive element may be lacking, in the sense that the child may voluntarily join the armed forces/groups or enter into the camel-racing activity, it is the position of the Committee that it cannot be defined as a voluntary choice; in most cases it is made by necessity, under threat or coercion, or due to poverty, neglect or absence of opportunities.

## Child pornography

23. The widespread distribution of child pornography and its easy accessibility through the Internet have been among the main issues of concern for the Committee during these two years. The Committee considers that States parties and the international community should urgently address these issues, which are reaching very alarming levels. For this reason, in the reporting period, it has consistently expressed its concern over these issues and recommended to States parties to adopt adequate legislation to tackle child pornography, including by criminalizing its possession and by adopting specific legislation on the obligations of Internet service providers in relation to child pornography on the Internet.[6]

---

[3] Concluding observations on the Sudan (CRC/C/OPSC/SDN/1) of 21 June 2007.

[4] Ibid., paras. 35 and 36.

[5] For the issue of camel racing in the concluding observations of the Committee, see concluding observations on the Sudan (CRC/C/OPSC/SDN/1), paras. 33 and 34, and those on Qatar (CRC/C/OPSC/QAT/1) of 2 June 2006, paras. 31-32 and 35-36.

[6] See for instance, the concluding observations of the Committee on Turkey (CRC/C/OPSC/TUR/CO/1) of 2 June 2006, paras. 17-19; on Costa Rica (CRC/C/OPSC/CRI/CO/1) of 2 February 2007, paras. 14-15; on the Sudan

## Sex tourism

24. Another issue of serious concern for the Committee is the increase of the phenomenon of sex tourism involving children. While sex tourism is not identified as a separate offence under article 3 of the Optional Protocol, it is mentioned in the preamble of the Optional Protocol as well as in its article 10, which deals with international cooperation. The Committee believes that sex tourism is directly connected to the offences covered by the Optional Protocol since it usually involves child prostitution and may be also related to child pornography and, to some extent, sale of children. In this respect, the Committee has recommended that States parties strengthen their efforts to prevent and combat sex tourism, in particular by promoting responsible tourism through awareness campaigns specifically directed at tourists as well as cooperating closely with tour operators, NGOs and civil society organizations.[7]

## Non-criminalization of victims, recovery and reintegration

25. In spite of the lack of an explicit provision excluding the criminalization and penalization of child victims of the offences covered by the Optional Protocol,[8] the issue of avoiding the criminalization and double victimization of child victims is among the most common concerns raised by the Committee in the dialogue with States parties. In this respect, the Committee believes that child victims of the offences covered by the Optional Protocol should be neither criminalized nor penalized, and that all possible measures should be taken to avoid their stigmatization and social marginalization. The Committee has noted that many States parties have difficulties with this issue and have inadequate legislation and contradictory provisions, especially with respect to the treatment of children used in prostitution.[9]

26. Directly related to the question of non-criminalization of victims is the obligation incumbent on States parties to take measures to ensure appropriate assistance to child victims,

---

(CRC/C/OPSC/SDN/CO/1) of 8 June 2007, paras. 23-24; on France (CRC/C/OPSC/FRA/CO/1) of 5 October 2007, paras. 16-17; and on Chile (CRC/C/OPSC/CHL/CO/1) of 1 February 2008, paras. 22-23.

[7] See the concluding observations of the Committee on Viet Nam (CRC/C/OPSC/VNM/CO/1) of 29 September 2006, paras. 16-17; on Costa Rica (CRC/C/OPSC/CRI/CO/1), paras. 22-23; on Guatemala (CRC/C/OPSC/GTM/CO/1) of 8 June 2007, paras. 33-34; on Bangladesh (CRC/C/OPSC/BGD/CO/1) of 8 June 2007, paras. 20-21; and on Chile (CRC/C/OPSC/CHL/CO/1), paras. 18-19.

[8] In the initial versions of the draft protocol, it was expressly foreseen to include a provision stating that the acts of child victims of the sale of children, child prostitution and child pornography directly related to these offences shall not be criminalized. See, for instance, the report of the Working Group on its second session (E/CN.4/1996/101, p. 30).

[9] See the concluding observations of the Committee on Iceland (CRC/C/OPSC/ISL/CO/1) of 2 June 2006, paras. 13 and 14; on the Sudan (CRC/C/OPSC/SDN/CO/1), paras. 29-30; on Bangladesh (CRC/C/OPSC/BGD/CO/1), paras. 32-33; and on Chile (CRC/C/OPSC/CHL/CO/1), paras. 29-30.

including their full social reintegration and their physical and psychological recovery. The Committee has regularly insisted on the importance of this provision and has stressed that the persons who work with victims of the offences prohibited under the Optional Protocol be equipped with the necessary legal and psychological training. Furthermore, victims should have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

**Prevention**

27. Finally, the Committee has regularly emphasized the importance of prevention, and notably of adopting a holistic approach to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.[10] The Committee has also highlighted the importance of the provision contained in article 9, paragraph 1, of the Optional Protocol, which recommends that States parties pay particular attention to the protection of children who are especially vulnerable to these practices, such as street children, children living in remote areas and those living in poverty,[11] giving due attention to girls who are among the particularly vulnerable.

## III. OVERVIEW OF THE OTHER ACTIVITIES OF THE COMMITTEE

### A. Methods of work

### 1. Work with a two-chamber system

28. Pursuant to General Assembly resolution 59/261 authorizing the Committee to meet in two chambers (see A/61/41), the Committee continued to meet in two chambers for its forty-second (15 May-2 June 2006) and forty-third sessions (11-29 September 2006). As of its forty-fourth session, the Committee resumed meetings in plenary, thus reducing the number of reports considered each session. The Committee found the two-chamber system most effective in reducing the backlog of reports pending consideration. The Chairperson of the Committee addressed the General Assembly on two occasions on this issue. The Committee has once again accumulated a backlog, which is expected to reach the level of the pre-two-chamber period. Forty-four reports had been received and were pending consideration as of 1 February 2008. As the Committee receives over 50 reports per year and can consider approximately 11 per session, it is inevitable that the backlog will continue to grow.

---

[10] See the concluding observations of the Committee on Morocco (CRC/C/OPSC/MAR/CO/1) of 27 January 2006, paras. 34-35; on Viet Nam (CRC/C/OPSC/VNM/CO/1), paras. 21-22; on the Sudan (CRC/C/OPSC/SDN/CO/1), paras. 17-18; and on Chile (CRC/C/OPSC/CHL/CO/1), paras. 21-22.

[11] See its concluding observations on the Sudan (CRC/C/OPSC/SDN/CO/1), paras. 17-18. See also concluding observations on Morocco (CRC/C/OPSC/MAR/CO/1), paras. 32-33; on the Syrian Arab Republic (CRC/C/OPSC/SYR/CO/1), 29 September 2006, paras. 25-26; on Viet Nam (CRC/C/OPSC/VNM/CO/1), paras. 21-22.

29. The Committee will consider this issue at its forty-eighth session (19 May-6 June 2008). The Chairperson of the Committee will express the views of the Committee in her oral report to the General Assembly at its sixty-third session in 2008, taking into account developments and discussions within the Committee until September 2008, as well as introduce any decisions the Committee may take at its forty-eighth session. A copy of any such decisions and the related statement of programme budget implications will be included in the report on the status of the Convention on the Rights of the Child to the General Assembly at its sixty-third session.

### 2. General comments

30. During the period under review, the Committee adopted the following three general comments:

- General comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8), at its forty-second session (see annex II)
- General comment No. 9 (2006) on the rights of children with disabilities (CRC/C/GC/9), at its forty-third session (see annex III)
- General Comment No. 10 (2007) on children's rights in juvenile justice (CRC/C/GC/10), at its forty-fourth session (see annex IV)

31. As is its practice, in addition to the active involvement of the Committee members, other relevant United Nations human rights treaty bodies and mechanisms, United Nations agencies and bodies, NGOs and individual experts participate in the process of drafting general comments. In addition to the three general comments adopted, the Committee is in the process of drafting two more general comments, one on the rights of indigenous children and another on the right of the child to be heard.

### 3. Introduction meeting for new members

32. On 18 May 2007, the Office of the United Nations High Commissioner for Human Rights (OHCHR) organized an informal introduction meeting to give the five newly elected members a chance to familiarize themselves with the working methods and procedures of the Committee. Five members of the Committee actively participated in the meeting.

## B. International cooperation and solidarity for the implementation of the Convention

### 1. Cooperation with United Nations and other competent bodies

33. During the period covered by the present report, the Committee pursued its cooperation with United Nations bodies, specialized agencies and other competent bodies.

34. The Committee held meetings with the following United Nations agencies and bodies and other competent bodies (the documents referred to in parentheses contain additional information on these meetings).

**United Nations bodies and agencies**

International Labour Organization/International Programme on the Elimination of Child Labour (ILO/IPEC) for a presentation of the ILO Global Report on Child Labour (CRC/C/42/3)

United Nations Children's Fund (UNICEF) Global Policy Section for a presentation of the report on the usefulness of the concluding observations of the Committee (CRC/C/42/3)

UNICEF, the NGO Group for the Convention on the Rights of the Child, and the International Reference Centre for the Rights of Children Deprived of Their Family of the International Social Service (ISS/IRC) to discuss the draft United Nations Guidelines for the protection and alternative care of children without parental care (CRC/C/42/3)

Ms. Hilde Frafjord Johnson, Deputy Executive Director of UNICEF and other representatives of UNICEF to receive the third revised version of the UNICEF Implementation Handbook for the Convention on the Rights of the Child (CRC/C/46/3)

Representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR), to discuss the revised guidelines for UNHCR staff on the determinations of the best interests of the child

**Others**

NGO Group, Sub-Group on Child Labour (CRC/C/42/3)

The Joint Coordinator of the Global Initiative to End All Corporal Punishment of Children, to discuss the general comment No. 8 (2006) of the Committee on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/42/3)

NGO Group, Sub-Group on Children and Violence (CRC/C/42/3)

Save the Children Alliance to introduce the Global Challenge on Education for Children affected by armed conflict (CRC/C/42/3)

Save the Children Alliance to introduce the Handbook on Child Rights Programming (CRC/C/42/3)

NGO Group for the Convention on the Rights of the Child to discuss ongoing cooperation, working methods related to the two chambers and issues related to treaty body reform (CRC/C/42/3)

Mr. Gary Melton, Consultant, UNICEF, the NGO Group for the Convention on the Rights of the Child, related to the development of a general comment on article 12 of the Convention (CRC/C/43/3)

World Health Organization (WHO), UNICEF, Bernard van Leer Foundation related to the work of the Committee, including its general comment No. 7 (2006) on implementing child rights in early childhood (CRC/C/43/3)

Defence for Children International, Palestine (CRC/C/43/3)

Defence for Children International (CRC/C/44/3)

Mr. Maarten Brekelman, World Initiative for Orphans (CRC/C/44/3)

Ms. Jeroo Billimoria Aflatoun, Child Savings International (CRC/C/44/3)

Aga Khan Foundation, Bernard van Leer Foundation, WHO, UNICEF related to general comment No. 7 (2006) on implementing child rights in early childhood (CRC/C/45/3)

Ms. Maud de Boer-Buquicchio, Deputy Secretary-General of the Council of Europe to discuss modalities of enhancing cooperation (CRC/C/45/3)

Ms. Gerison Lansdown (consultant) UNICEF and Save the Children UK on general comment on article 12 of the Convention (CRC/C/45/3)

Representative of the Government of Brazil, UNICEF and International Social Service related to the draft United Nations guidelines for the protection and alternative care of children without parental care (CRC/C/45/3)

Save the Children Alliance, to discuss education in situations of conflict (CRC/C/45/3)

Ms. Davinia Ovett and Mr. Bernard Boeton, related to the activities of the Interagency Panel on Juvenile Justice (CRC/C/46/3)

Mr. Jakob E. Doek, former Chairperson of the Committee, to discuss issues related to possible cooperation with the African Committee on the Rights and Welfare of the Child (CRC/C/46/3)

Mr. Peter Newell, Joint Coordinator of the Global Initiative to End All Corporal Punishment of Children and Ms. Jennifer Philpot-Nissen, World Vision International, for a presentation of the civil society initiative for the development of a complaints procedure under the Convention on the Rights of the Child (CRC/C/46/3)

Representatives of the Coordinating Committee of the NGO Group for the Convention on the Rights of the Child to discuss issues of cooperation and mutual interest (CRC/C/46/3)

International Baby Food Action Network (CRC/C/47/3)

Delegations of the Group of Latin American and Caribbean States (GRULAC), the European Union (EU) and other States parties to the Convention for an informal discussion related to child rights and the Human Rights Council (CRC/C/47/3)

Commissioner of Social Affairs of the African Commission, to discuss cooperation with the African Committee on the Rights and Welfare of the Child

Ms. Gerison Lansdown (consultant) on the general comment on article 12 of the Convention (CRC/C/47/3)

International Federation of Social Workers (CRC/C/47/3).

35. The Committee also held meetings with experts from the following other United Nations human rights mechanisms:

Mr. Paulo Sergio Pinheiro, independent expert for the United Nations study on violence against children (CRC/C/42)

Mr. Paulo Sergio Pinheiro, independent expert for the United Nations study on violence against children, to discuss the study (A/61/299), the report of the independent expert for the United Nations study on violence against children (A/62/209) and the follow-up to the recommendations of the study (CRC/C/43/3, CRC/C/44/3 and CRC/C/45/3)

Mr. Miloon Kothari, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (CRC/C/45/3).

36. The Chairperson of the Committee participated in the eighteenth and nineteenth meetings of persons chairing the human rights treaty bodies. Three members of the Committee also participated in the fifth and sixth inter-committee meetings (held in June 2006 and 2007).

### 2. Participation in United Nations and other relevant meetings

37. Members of the Committee participated in a variety of meetings at the international, regional and national levels where issues relevant to the rights of the child were raised.

### 3. Other related activities

38. The Office of the High Commissioner for Human Rights, in cooperation with the Government of Burkina Faso, the NGO Plan International, UNICEF and the International Organization of la Francophonie (OIF), organized a subregional seminar on the implementation of the concluding observations of the Committee, from 6 to 8 November 2007 in Ouagadougou. The seminar, bringing together over 150 participants, was directed at government officials, members of parliament, representatives of national human rights institutions and the civil society. It also brought together journalists from eight francophone countries of the West African region, namely Benin, Burkina Faso, Côte d'Ivoire, Guinea, Mali, Niger, Senegal and Togo. Additionally, one government representative and one NGO representative from each of the following countries was invited to participate in the meeting as observers: Cape Verde and Guinea Bissau (as lusophone countries); Ghana (as an anglophone member of the Economic Community of West African States (ECOWAS)); and Cameroon (as a Central African country). A number of experts, including members of the African Committee on the Rights and Welfare of the Child, also participated in the workshop. In addition, five members of the Committee on the Rights of the Child, Ms. Yanghee Lee, Chairperson, Mr. Jean Zermatten and Mr. Kamel Filali, Vice-Chairpersons, Mr. Hatem Kotrane and Ms. Agnes Aidoo - also participated as experts.

Representatives of United Nations entities, regional organizations (African Commission on Human Rights and ECOWAS), and international NGOs (such as Save the Children, the NGO Group for the Convention on the Rights of the Child, the International Baby-Food Action Network), also actively participated.

39. Members of the Committee have actively contributed to activities related to the United Nations study on violence against children, which was presented to the General Assembly at its sixty-first session (A/61/299). The Committee has consistently encouraged States parties to the Convention to implement the recommendations contained in the study. The Committee notes with appreciation the progress report presented by the independent expert for the United Nations study on violence against children to the General Assembly at its sixty-second session (A/62/209) documenting the wealth of initiatives generated by the study. The Committee welcomes General Assembly resolution 62/141, in which the Assembly requested the Secretary-General to appoint a Special Representative on violence against children. The Committee is confident that the Special Representative will ensure high level, sustained support for existing efforts to implement the recommendations of the study and to eliminate violence against children.

## C. General thematic discussions

40. In accordance with rule 75 of its rules of procedure, the Committee holds an annual day of general discussion on the first Friday of its September session. On 15 September 2006, at the forty-third session of the Committee, the thematic discussion was devoted to the right of the child to be heard. The discussion was well attended by representatives of States parties, United Nations agencies, funds and programmes, NGOs and academic institutions. A summary of the discussion, the list of participants and the set of related recommendations adopted by the Committee can be found in the report of the Committee on its forty-third session (CRC/C/43/3). The Committee has also continued to follow this thematic issue closely and is in the process of preparing a general comment on the issue (see paragraph 31 above).

41. On 21 September 2007, at the forty-seventh session, the day of general discussion was devoted to the issue of "Resources for the rights of the child - responsibility of States". Representatives of States parties, United Nations partners and NGOs attended the discussion. A summary of the discussion and the recommendations adopted by the Committee as well as a list of participants are contained in the report of the Committee on its forty-sixth session (CRC/C/46/3).

## Annex I

## MEMBERSHIP OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

| *Name of member* | *Country of nationality* |
|---|---|
| Ms. Agnes Akosua AIDOO* | Ghana |
| Ms. Alya Ahmed Bin Saif AL-THANI**[a] | Qatar |
| Ms. Joyce ALUOCH** | Kenya |
| Mr. Luigi CITARELLA* | Italy |
| Mr. Kamel FILALI* | Algeria |
| Ms. Maria HERCZOG* | Hungary |
| Ms. Moushira KHATTAB* | Egypt |
| Mr. Hatem KOTRANE* | Tunisia |
| Mr. Lothar Friedrich KRAPPMANN* | Germany |
| Ms. Yanghee LEE** | Republic of Korea |
| Ms. Rosa Maria ORTIZ* | Paraguay |
| Mr. David Brent PARFITT** | Canada |
| Mr. Awich POLLAR** | Uganda |
| Mr. Dainius PURAS* | Lithuania |
| Mr. Kamal SIDDIQUI** | Bangladesh |
| Ms. Lucy SMITH** | Norway |
| Ms. Nevena VUCKOVIC-SAHOVIC** | Republic of Serbia |
| Mr. Jean ZERMATTEN** | Switzerland |

---

* Term expires on 28 February 2011.

** Term expires on 28 February 2009.

[a] Replacing Ms. Ghalia Al-Thani following her resignation as of 17 September 2007.

*Bureau of the Committee on the Rights of the Child 2007-2009*

**Chairperson:** Ms. Lee

**Vice-Chair:** Ms. Aidoo[b]

**Vice-Chair:** Mr. Filali

**Vice-Chair:** Ms. Ortiz

**Vice-Chair:** Mr. Zermatten

**Rapporteur:** Mr. Krappmann

---

[b] Ms. Aidoo replaced Mr. Pollar who was appointed Vice-Chair at the forty-fifth session in May 2007; he later stepped down from this position at the forty-sixth session in September 2007.

## Annex II

## GENERAL COMMENT No. 8 (2006)

## The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)

### I. OBJECTIVES

1. Following its two days of general discussion on violence against children, held in 2000 and 2001, the Committee on the Rights of the Child ("the Committee") resolved to issue a series of general comments concerning eliminating violence against children, of which this is the first. The Committee aims to guide States parties in understanding the provisions of the Convention on the Rights of the Child ("the Convention") concerning the protection of children against all forms of violence. This general comment focuses on corporal punishment and other cruel or degrading forms of punishment, which are currently very widely accepted and practised forms of violence against children.

2. The Convention and other international human rights instruments recognize the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law. The Committee is issuing this general comment to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.

3. Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies.

### II. BACKGROUND

4. The Committee has, from its earliest sessions, paid special attention to asserting children's right to protection from all forms of violence. In its examination of States parties' reports, and most recently in the context of the United Nations study on violence against children, it has noted with great concern the widespread legality and persisting social approval of corporal punishment and other cruel or degrading punishment of children.[a] Already in 1993, the Committee noted in its report on its fourth session that it "recognized the importance of the question of corporal punishment in improving the system of promotion and protection of the rights of the child and decided to continue to devote attention to it in the process of examining States parties' reports".[b]

---

[a] United Nations study on violence against children (A/61/299). For details see http://www.violencestudy.org.

[b] CRC/C/20, para. 176.

5. Since it began examining States parties' reports the Committee has recommended prohibition of all corporal punishment, in the family and other settings, to more than 130 States in all continents.[c] The Committee is encouraged that a growing number of States are taking appropriate legislative and other measures to assert children's right to respect for their human dignity and physical integrity and to equal protection under the law. The Committee understands that by 2006, more than 100 States had prohibited corporal punishment in their schools and penal systems for children. A growing number have completed prohibition in the home and family and all forms of alternative care.[d]

6. In September 2000, the Committee held its first of two days of general discussion on violence against children. It focused on "State violence against children" and afterwards adopted detailed recommendations, including for the prohibition of all corporal punishment and the launching of public information campaigns "to raise awareness of and sensitize the public about the severity of human rights violations in this domain and their harmful impact on children, and to address cultural acceptance of violence against children, promoting instead 'zero-tolerance' of violence".[e]

7. In April 2001, the Committee adopted its first general comment on "The aims of education" and reiterated that corporal punishment was incompatible with the Convention: "… Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her views freely in accordance with article 12, paragraph 1, and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28, paragraph 2, and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline".[f]

8. In recommendations adopted following its second day of general discussion, on "Violence against children within the family and in schools", held in September 2001, the Committee called upon States to "enact or repeal, as a matter of urgency, their legislation in

---

[c] All the concluding observations adopted by the Committee may be consulted at www.ohchr.org.

[d] The Global Initiative to End All Corporal Punishment of Children provides reports on the legal status of corporal punishment at www.endcorporalpunishment.org.

[e] Committee on the Rights of the Child, day of general discussion on State violence against children, Report of the Committee on its twenty-fifth session, September/October 2000, (CRC/C/100), paras. 666-688.

[f] Committee on the Rights of the Child, general comment No. 1 (2001), The aims of education, para. 8.

**order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention".[g]**

**9. Another outcome of the Committee's 2000 and 2001 days of general discussion was a recommendation that the Secretary-General should be requested, through the General Assembly, to carry out an in-depth international study on violence against children. The General Assembly took this forward in 2001.[h] Within the context of the United Nations study, carried out between 2003 and 2006, the need to prohibit all currently legalized violence against children has been highlighted, as has children's own deep concern at the almost universal high prevalence of corporal punishment in the family and also its persisting legality in many States in schools and other institutions, and in penal systems for children in conflict with the law.**

## III. DEFINITIONS

**10. "Child" is defined as in the Convention as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".[i]**

**11. The Committee defines "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.**

**12. Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including within the home and family, in all forms of alternative care, schools and other educational institutions and justice systems - both as a sentence of the courts and as a punishment within penal and other institutions - in situations of child labour, and in the community.**

**13. In rejecting any justification of violence and humiliation as forms of punishment for children, the Committee is not in any sense rejecting the positive concept of discipline. The**

---

**[g] Committee on the Rights of the Child, day of general discussion on violence against children within the family and in schools, Report on the twenty-eighth session, September/October 2001, (CRC/C/111), paras. 701-745.**

**[h] General Assembly resolution 56/138.**

**[i] Article 1.**

**healthy development of children depends on parents and other adults for necessary guidance and direction, in line with children's evolving capacities, to assist their growth towards responsible life in society.**

**14. The Committee recognizes that parenting and caring for children, especially babies and young children, demand frequent physical actions and interventions to protect them. This is quite distinct from the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation. As adults, we know for ourselves the difference between a protective physical action and a punitive assault; it is no more difficult to make a distinction in relation to actions involving children. The law in all States, explicitly or implicitly, allows for the use of non-punitive and necessary force to protect people.**

**15. The Committee recognizes that there are exceptional circumstances in which teachers and others, e.g. those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour, which justifies the use of reasonable restraint to control it. Here too there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control.**

## IV. HUMAN RIGHTS STANDARDS AND CORPORAL PUNISHMENT OF CHILDREN

**16. Before the adoption of the Convention, the International Bill of Human Rights - the Universal Declaration and the two International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights - upheld "everyone's" right to respect for his/her human dignity and physical integrity and to equal protection under the law. In asserting the obligation of States to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment, the Committee notes that the Convention builds on this foundation. The dignity of each and every individual is the fundamental guiding principle of international human rights law.**

**17. The preamble to the Convention affirms, in accordance with the principles in the Charter of the United Nations, repeated in the preamble to the Universal Declaration, that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". The preamble to the Convention also recalls that, in the Universal Declaration, the United Nations "has proclaimed that childhood is entitled to special care and assistance".**

**18. Article 37 of the Convention requires States to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". This is complemented and extended by article 19, which requires States to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child". There is no ambiguity: "all forms of physical or mental violence" does not leave room for any level of legalized violence against children. Corporal punishment and**

other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.

19. In addition, article 28, paragraph 2, of the Convention refers to school discipline and requires States parties to "take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention".

20. Article 19 and article 28, paragraph 2, do not refer explicitly to corporal punishment. The *travaux préparatoires* for the Convention do not record any discussion of corporal punishment during the drafting sessions. But the Convention, like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time. In the 17 years since the Convention was adopted, the prevalence of corporal punishment of children in their homes, schools and other institutions has become more visible, through the reporting process under the Convention and through research and advocacy by, among others, national human rights institutions and non-governmental organizations (NGOs).

21. Once visible, it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.

22. The Committee emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties. It notes that other treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture have reflected the same view in their concluding observations on States parties' reports under the relevant instruments, recommending prohibition and other measures against corporal punishment in schools, penal systems and, in some cases, the family. For example, the Committee on Economic, Social and Cultural Rights, in its general comment No. 13 (1999) on "The right to education" stated: "In the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration and both Covenants: the dignity of the individual. Other aspects of school discipline may also be inconsistent with school discipline, including public humiliation."[j]

23. Corporal punishment has also been condemned by regional human rights mechanisms. The European Court of Human Rights, in a series of judgements, has progressively condemned corporal punishment of children, first in the penal system, then in schools, including private schools, and most recently in the home.[k] The European Committee of Social Rights, monitoring

---

[j] Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education (art. 13), para. 41.

[k] Corporal punishment was condemned in a series of decisions of the European Commission on Human Rights and judgements of the European Court of Human Rights; see in particular *Tyrer*

compliance of member States of the Council of Europe with the European Social Charter and Revised Social Charter, has found that compliance with the Charters requires prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere.[l]

24. An Advisory Opinion of the Inter-American Court of Human Rights, on the *Legal Status and Human Rights of the Child* (2002) holds that the States parties to the American Convention on Human Rights "are under the obligation … to adopt all positive measures required to ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities". The Court quotes provisions of the Convention on the Rights of the Child, conclusions of the Committee on the Rights of the Child and also judgements of the European Court of Human Rights relating to the obligations of States to protect children from violence, including within the family. The Court concludes that "the State has the duty to adopt positive measures to fully ensure effective exercise of the rights of the child".[m]

25. The African Commission on Human and Peoples' Rights monitors implementation of the African Charter on Human and Peoples' Rights. In a 2003 decision on an individual communication concerning a sentence of "lashes" imposed on students, the Commission found that the punishment violated article 5 of the African Charter, which prohibits cruel, inhuman or degrading punishment. It requested the relevant Government to amend the law, abolishing the penalty of lashes, and to take appropriate measures to ensure compensation of the victims. In its decision, the Commission states: "There is no right for individuals, and particularly the Government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State-sponsored torture under the Charter and contrary to the very nature of this human rights treaty."[n] The Committee on the Rights of the Child is pleased to

---

*v. UK*, 1978; *Campbell and Cosans v. UK*, 1982; *Costello-Roberts v. UK*, 1993; *A v. UK*, 1998. European Court judgements are available at http://www.echr.coe.int/echr.

[l] European Committee of Social Rights, general observations regarding article 7, paragraph 10, and article 17, *Conclusions XV-2*, Vol. 1, General Introduction, p. 26, 2001; the Committee has since issued conclusions, finding a number of member States not in compliance because of their failure to prohibit all corporal punishment in the family and in other settings. In 2005 it issued decisions on collective complaints made under the charters, finding three States not in compliance because of their failure to prohibit. For details, see www.coe.int/T/E/Human_Rights/Esc/; also *Eliminating corporal punishment: a human rights imperative for Europe's children*, Council of Europe Publishing, 2005.

[m] Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 of 28 August 2002, paras. 87 and 91.

[n] African Commission on Human and Peoples' Rights, *Curtis Francis Doebbler v. Sudan*, Comm. No. 236/2000 (2003); see para. 42.

note that constitutional and other high-level courts in many countries have issued decisions condemning corporal punishment of children in some or all settings, and in most cases quoting the Convention.[•]

26. When the Committee has raised eliminating corporal punishment with certain States during the examination of their reports, governmental representatives have sometimes suggested that some level of "reasonable" or "moderate" corporal punishment can be justified as in the "best interests" of the child. The Committee has identified, as an important general principle, the requirement of the Convention that the best interests of the child should be a primary consideration in all actions concerning children (art. 3, para. 1). The Convention also asserts, in article 18, that the best interests of the child will be parents' basic concern. But interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity.

27. The preamble to the Convention upholds the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". The Convention requires States to respect and support families. There is no conflict whatsoever with the obligation of States to ensure that the human dignity and physical integrity of children within the family receive full protection alongside other family members.

28. Article 5 of the Convention requires States to respect the responsibilities, rights and duties of parents "to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the

---

[•] For example, in 2002 the Fiji Court of Appeal declared corporal punishment in schools and the penal system unconstitutional. The judgement declared: "Children have rights no wit inferior to the rights of adults. Fiji has ratified the Convention on the Rights of the Child. Our Constitution also guarantees fundamental rights to every person. Government is required to adhere to principles respecting the rights of all individuals, communities and groups. By their status as children, children need special protection. Our educational institutions should be sanctuaries of peace and creative enrichment, not places for fear, ill-treatment and tampering with the human dignity of students" (Fiji Court of Appeal, *Naushad Ali v. State*, 2002). In 1996, Italy's highest Court, the Supreme Court of Cassation in Rome, issued a decision that effectively prohibited all parental use of corporal punishment. The judgement states: "The use of violence for educational purposes can no longer be considered lawful. There are two reasons for this: the first is the overriding importance which the [Italian] legal system attributes to protecting the dignity of the individual. This includes 'minors' who now hold rights and are no longer simply objects to be protected by their parents or, worse still, objects at the disposal of their parents. The second reason is that, as an educational aim, the harmonious development of a child's personality, which ensures that he/she embraces the values of peace, tolerance and co-existence, cannot be achieved by using violent means which contradict these goals" (Cambria, Cass, sez. VI, 18 Marzo 1996 [Supreme Court of Cassation, 6th Penal Section, 18 March 1996], Foro It II 1996, 407 (Italy)). Also see South African Constitutional Court (2000) *Christian Education South Africa v. Minister of Education*, CCT4/00; 2000 (4) SA757 (CC); 2000 (10) BCLR 1051 (CC), 18 August 2000.

present Convention". Here again, interpretation of "appropriate" direction and guidance must be consistent with the whole Convention and leaves no room for justification of violent or other cruel or degrading forms of discipline.

29. Some raise faith-based justifications for corporal punishment, suggesting that certain interpretations of religious texts not only justify its use, but provide a duty to use it. Freedom of religious belief is upheld for everyone in the International Covenant on Civil and Political Rights (art. 18), but practise of a religion or belief must be consistent with respect for others' human dignity and physical integrity. Freedom to practise one's religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others. In certain States, the Committee has found that children, in some cases from a very young age, in other cases from the time that they are judged to have reached puberty, may be sentenced to punishments of extreme violence, including stoning and amputation, prescribed under certain interpretations of religious law. Such punishments plainly violate the Convention and other international human rights standards, as has been highlighted also by the Human Rights Committee and the Committee against Torture, and must be prohibited.

## V. MEASURES AND MECHANISMS REQUIRED TO ELIMINATE CORPORAL PUNISHMENT AND OTHER CRUEL OR DEGRADING FORMS OF PUNISHMENT

### A. Legislative measures

30. The wording of article 19 of the Convention builds on article 4 and makes clear that legislative as well as other measures are required to fulfil the obligations of States to protect children from all forms of violence. The Committee has welcomed the fact that, in many States, the Convention or its principles have been incorporated into domestic law. All States have criminal laws to protect citizens from assault. Many have constitutions and/or legislation reflecting international human rights standards and article 37 of the Convention, which uphold "everyone's" right to protection from torture and cruel, inhuman or degrading treatment or punishment. Many also have specific child protection laws that make "ill-treatment" or "abuse" or "cruelty" an offence. But the Committee has learned from its examination of States' reports that such legislative provisions do not generally guarantee the child protection from all corporal punishment and other cruel or degrading forms of punishment, in the family and in other settings.

31. In its examination of reports, the Committee has noted that in many States there are explicit legal provisions in criminal and/or civil (family) codes that provide parents and other carers with a defence or justification for using some degree of violence in "disciplining" children. For example, the defence of "lawful", "reasonable" or "moderate" chastisement or correction has formed part of English common law for centuries, as has a "right of correction" in French law. At one time, in many States, the same defence was also available to justify the chastisement of wives by their husbands and of slaves, servants and apprentices by their masters. The Committee emphasizes that the Convention requires the removal of any provisions (in statute or common - case law) that allow some degree of violence against children (e.g. "reasonable" or "moderate" chastisement or correction), in their homes/families or in any other setting.

32. In some States, corporal punishment is specifically authorized in schools and other institutions, with regulations setting out how it is to be administered and by whom. And in a minority of States, corporal punishment using canes or whips is still authorized as a sentence of the courts for child offenders. As frequently reiterated by the Committee, the Convention requires the repeal of all such provisions.

33. In some States, the Committee has observed that while there is no explicit defence or justification of corporal punishment in the legislation, nevertheless traditional attitudes to children imply that corporal punishment is permitted. Sometimes these attitudes are reflected in court decisions (in which parents or teachers or other carers have been acquitted of assault or ill-treatment on the grounds that they were exercising a right or freedom to use moderate "correction").

34. In the light of the traditional acceptance of violent and humiliating forms of punishment of children, a growing number of States have recognized that simply repealing authorization of corporal punishment and any existing defences is not enough. In addition, explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in their civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or "smack" or "spank" a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed "discipline" or "reasonable correction".

35. Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever he or she is and whoever the perpetrator is. But in the view of the Committee, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation - e.g. family law, education law, law relating to all forms of alternative care and justice systems, employment law - clearly prohibits its use in the relevant settings. In addition, it is valuable if professional codes of ethics and guidance for teachers, carers and others, and also the rules or charters of institutions, emphasize the illegality of corporal punishment and other cruel or degrading forms of punishment.

36. The Committee is also concerned at reports that corporal punishment and other cruel or degrading punishments are used in situations of child labour, including in the domestic context. The Committee reiterates that the Convention and other applicable human rights instruments protect the child from economic exploitation and from any work that is likely to be hazardous, interferes with the child's education, or is harmful to the child's development, and that they require certain safeguards to ensure the effective enforcement of this protection. The Committee emphasizes that it is essential that the prohibition of corporal punishment and other cruel or degrading forms of punishment must be enforced in any situations in which children are working.

37. Article 39 of the Convention requires States to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of "any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment". Corporal punishment and other degrading forms of punishment may inflict serious damage to the physical, psychological and social development of children, requiring appropriate health and other care and treatment. This must take place in an environment that fosters the integral health, self-respect and dignity of the child, and be extended

as appropriate to the child's family group. There should be an interdisciplinary approach to planning and providing care and treatment, with specialized training of the professionals involved. The child's views should be given due weight concerning all aspects of their treatment and in reviewing it.

### B. Implementation of prohibition of corporal punishment and other cruel or degrading forms of punishment

38. The Committee believes that implementation of the prohibition of all corporal punishment requires awareness-raising, guidance and training (see paragraph 45 et seq. below) for all those involved. This must ensure that the law operates in the best interests of the affected children - in particular when parents or other close family members are the perpetrators. The first purpose of law reform to prohibit corporal punishment of children within the family is prevention: to prevent violence against children by changing attitudes and practice, underlining children's right to equal protection and providing an unambiguous foundation for child protection and for the promotion of positive, non-violent and participatory forms of child-rearing.

39. Achieving a clear and unconditional prohibition of all corporal punishment will require varying legal reforms in different States parties. It may require specific provisions in sectoral laws covering education, juvenile justice and all forms of alternative care. But it should be made explicitly clear that the criminal law provisions on assault also cover all corporal punishment, including in the family. This may require an additional provision in the criminal code of the State party. But it is also possible to include a provision in the civil code or family law, prohibiting the use of all forms of violence, including all corporal punishment. Such a provision emphasizes that parents or other caretakers can no longer use any traditional defence that it is their right ("reasonably" or "moderately") to use corporal punishment if they face prosecution under the criminal code. Family law should also positively emphasize that parental responsibility includes providing appropriate direction and guidance to children without any form of violence.

40. The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The *de minimis* principle - that the law does not concern itself with trivial matters - ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.

41. Children's dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children's best interests. It is the Committee's view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The views of the affected child should be given due weight, according to his or her age and maturity.

42. Advice and training for all those involved in child protection systems, including the police, prosecuting authorities and the courts, should underline this approach to enforcement of the law. Guidance should also emphasize that article 9 of the Convention requires that any separation of the child from his or her parents must be deemed necessary in the best interests of the child and be subject to judicial review, in accordance with applicable law and procedures, with all interested parties, including the child, represented. Where separation is deemed to be justified, alternatives to placement of the child outside the family should be considered, including removal of the perpetrator, suspended sentencing, and so on.

43. Where, despite prohibition and positive education and training programmes, cases of corporal punishment come to light outside the family home - in schools, other institutions and forms of alternative care, for example - prosecution may be a reasonable response. The threat to the perpetrator of other disciplinary action or dismissal should also act as a clear deterrent. It is essential that the prohibition of all corporal punishment and other cruel or degrading punishment, and the sanctions that may be imposed if it is inflicted, should be well disseminated to children and to all those working with or for children in all settings. Monitoring disciplinary systems and the treatment of children must be part of the sustained supervision of all institutions and placements which is required by the Convention. Children and their representatives in all such placements must have immediate and confidential access to child-sensitive advice, advocacy and complaints procedures and ultimately to the courts, with necessary legal and other assistance. In institutions, there should be a requirement to report and to review any violent incidents.

## C. Educational and other measures

44. Article 12 of the Convention underlines the importance of giving due consideration to children's views on the development and implementation of educational and other measures to eradicate corporal punishment and other cruel or degrading forms of punishment.

45. Given the widespread traditional acceptance of corporal punishment, prohibition on its own will not achieve the necessary change in attitudes and practice. Comprehensive awareness-raising of children's right to protection and of the laws that reflect this right is required. Under article 42 of the Convention, States undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

46. In addition, States must ensure that positive, non-violent relationships and education are consistently promoted to parents, carers, teachers and all others who work with children and families. The Committee emphasizes that the Convention requires the elimination not only of corporal punishment but of all other cruel or degrading punishment of children. It is not for the Convention to prescribe in detail how parents should relate to or guide their children. But the Convention does provide a framework of principles to guide relationships both within the family, and between teachers, carers and others and children. Children's developmental needs must be respected. Children learn from what adults do, not only from what adults say. When the adults to whom a child most closely relates use violence and humiliation in their relationship with the child, they are demonstrating disrespect for human rights and teaching a potent and dangerous lesson that these are legitimate ways to seek to resolve conflict or change behaviour.

**47. The Convention asserts the status of the child as an individual person and holder of human rights. The child is not a possession of parents, nor of the State, nor simply an object of concern. In this spirit, article 5 requires parents (or, where applicable, members of the extended family or community) to provide the child with appropriate direction and guidance, in a manner consistent with his/her evolving capacities, in the exercise by the child of the rights recognized in the Convention. Article 18, which underlines the primary responsibility of parents, or legal guardians, for the upbringing and development of the child, states that "the best interests of the child will be their basic concern". Under article 12, States are required to assure children the right to express their views freely "in all matters affecting the child", with the views of the child being given due weight in accordance with age and maturity. This emphasizes the need for styles of parenting, caring and teaching that respect children's participation rights. In its general comment No. 1 (2001) on the aims of education, the Committee has emphasized the importance of developing education that is "child-centred, child-friendly and empowering".[p]**

**48. The Committee notes that there are now many examples of materials and programmes promoting positive, non-violent forms of parenting and education, addressed to parents, other carers and teachers and developed by Governments, United Nations agencies, NGOs and others.[q] These can be appropriately adapted for use in different States and situations. The media can play a very valuable role in awareness-raising and public education. Challenging traditional dependence on corporal punishment and other cruel or degrading forms of discipline requires sustained action. The promotion of non-violent forms of parenting and education should be built into all the points of contact between the State and parents and children, in health, welfare and educational services, including early childhood institutions, day-care centres and schools. It should also be integrated into the initial and in-service training of teachers and all those working with children in care and justice systems.**

**49. The Committee proposes that States may wish to seek technical assistance from, among others, the United Nations Children's Fund (UNICEF) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) concerning awareness-raising, public education and training to promote non-violent approaches.**

### D. Monitoring and evaluation

**50. The Committee, in its general comment No. 5 (2003) on general measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), emphasizes the need for systematic monitoring by States parties of the realization of children's rights, through the development of appropriate indicators and the collection of sufficient and reliable data.[r]**

---

**[p] See note f above.**

**[q] The Committee commends, as one example, UNESCO handbook, *Eliminating corporal punishment: the way forward to constructive child discipline*, UNESCO Publishing, Paris, 2005. This provides a set of principles for constructive discipline, rooted in the Convention. It also includes Internet references to materials and programmes available worldwide.**

**[r] Committee on the Rights of the Child, general comment No. 5 (2003), "General measures of implementation for the Convention on the Rights of the Child", para. 2.**

51. Therefore States parties should monitor their progress towards eliminating corporal punishment and other cruel or degrading forms of punishment and thus realizing children's right to protection. Research using interviews with children, their parents and other carers, in conditions of confidentiality and with appropriate ethical safeguards, is essential in order to accurately assess the prevalence of these forms of violence within the family and attitudes to them. The Committee encourages every State to carry out/commission such research, as far as possible with groups representative of the whole population, to provide baseline information and then at regular intervals to measure progress. The results of this research can also provide valuable guidance for the development of universal and targeted awareness-raising campaigns and training for professionals working with or for children.

52. The Committee also underlines in its general comment No. 5 (2003) the importance of independent monitoring of implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions (see also the Committee's general comment No. 2 (2002) on "The role of independent national human rights institutions in the protection and promotion of the rights of the child"). These could all play an important role in monitoring the realization of children's right to protection from all corporal punishment and other cruel or degrading forms of punishment.

## VI. REPORTING REQUIREMENTS UNDER THE CONVENTION

53. The Committee expects States to include in their periodic reports under the Convention information on the measures taken to prohibit and prevent all corporal punishment and other cruel or degrading forms of punishment in the family and all other settings, including on related awareness-raising activities and promotion of positive, non-violent relationships and on the State's evaluation of progress towards achieving full respect for children's rights to protection from all forms of violence. The Committee also encourages United Nations agencies, national human rights institutions, NGOs and other competent bodies to provide it with relevant information on the legal status and prevalence of corporal punishment and progress towards its elimination.

# Annex III

# GENERAL COMMENT No. 9 (2006)

## The rights of children with disabilities

## I. INTRODUCTION

### A. Why a general comment on children with disabilities?

1. It is estimated that there are 500-650 million persons with disabilities in the world, approximately 10 per cent of the world population, 150 million of whom are children. More than 80 per cent live in developing countries with little or no access to services. The majority of children with disabilities in developing countries remain out of school and are completely illiterate. It is recognized that most of the causes of disabilities, such as war, illness and poverty, are preventable which also prevent and/or reduce the secondary impacts of disabilities, often caused by the lack of early/timely intervention. Therefore, more should be done to create the necessary political will and real commitment to investigate and put into practice the most effective actions to prevent disabilities with the participation of all levels of society.

2. The past few decades have witnessed positive focus on persons with disabilities in general and children in particular. The reason for this new focus is explained partly by the fact that the voice of persons with disabilities and their advocates from national and international non-governmental organizations (NGOs) is being increasingly heard and partly by the growing attention paid to persons with disabilities within the framework of the human rights treaties and the United Nations human rights treaty bodies. These treaty bodies have considerable potential in advancing the rights of persons with disabilities but they have generally been underused. When adopted in November 1989 the Convention on the Rights of the Child ("the Convention") was the first human rights treaty that contained a specific reference to disability (article 2 on non-discrimination) and a separate article 23 exclusively dedicated to the rights and needs of children with disabilities. Since the Convention entered into force (2 September 1990), the Committee on the Rights of the Child ("the Committee") has paid sustained and particular attention to disability-based discrimination[a] while other human rights treaty bodies have paid attention to disability-based discrimination under "other status" in the context of articles on non-discrimination of their relevant convention. In 1994 the Committee on Economic, Social and Cultural Rights issued its general comment No. 5 on persons with disabilities and stated in paragraph 15 that "The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services". The Special Rapporteur on disability of the United Nations Commission for Social Development was first appointed in 1994 and mandated to monitor the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly at its forty-eighth session in 1993 (resolution 48/96, annex), and to advance the status of persons with disabilities throughout the world. On 6 October 1997 the Committee devoted its day of

---

[a] See Wouter Vandenhole, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies*, pp.170-172, Antwerpen/Oxford, Intersentia 2005.

general discussion to children with disabilities and adopted a set of recommendations,[b] in which it considered the possibility of drafting a general comment on children with disabilities. The Committee notes with appreciation the work of the Ad-Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, and that it adopted at its eighth session, held in New York on 25 August 2006, a draft convention on the rights of persons with disabilities to be submitted to the General Assembly at its sixty-first session.[c]

3. The Committee, in reviewing State party reports, has accumulated a wealth of information on the status of children with disabilities worldwide and found that in the overwhelming majority of countries some recommendations had to be made specifically to address the situation of children with disabilities. The problems identified and addressed have varied from exclusion from decision-making processes to severe discrimination and actual killing of children with disabilities. Poverty being both a cause and a consequence of disability, the Committee has repeatedly stressed that children with disabilities and their families have the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of their living conditions. The question of children with disabilities living in poverty should be addressed by allocating adequate budgetary resources as well as by ensuring that children with disabilities have access to social protection and poverty reduction programmes.

4. The Committee has noted that no reservations or declarations have been entered specifically to article 23 of the Convention by any State party.

5. The Committee also notes that children with disabilities are still experiencing serious difficulties and facing barriers to the full enjoyment of the rights enshrined in the Convention. The Committee emphasizes that the barrier is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives. The strategy for promoting their rights is therefore to take the necessary action to remove those barriers. Acknowledging the importance of articles 2 and 23 of the Convention, the Committee states from the outset that the implementation of the Convention with regards to children with disabilities should not be limited to these articles.

6. The present general comment is meant to provide guidance and assistance to States parties in their efforts to implement the rights of children with disabilities, in a comprehensive manner which covers all the provisions of the Convention. Thus, the Committee will first make some observations related directly to articles 2 and 23, then it will elaborate on the necessity of paying particular attention to and including explicitly children with disabilities within the framework of general measures for the implementation of the Convention. Those observations will be followed by comments on the meaning and the implementation of the various articles of the Convention (clustered in accordance with the Committee's practice) for children with disabilities.

---

[b] CRC/C/66, paras. 310-339.

[c] A/AC.265/2006/4, annex II.

### B. Definition

7. According to article 1, paragraph 2, of the draft convention on the rights of persons with disabilities, "Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."[d]

## II. THE KEY PROVISIONS FOR CHILDREN WITH DISABILITIES (arts. 2 and 23)

### A. Article 2

8. Article 2 requires States parties to ensure that all children within their jurisdiction enjoy all the rights enshrined in the Convention without discrimination of any kind. This obligation requires States parties to take appropriate measures to prevent all forms of discrimination, including on the ground of disability. This explicit mention of disability as a prohibited ground for discrimination in article 2 is unique and can be explained by the fact that children with disabilities belong to one of the most vulnerable groups of children. In many cases forms of multiple discrimination - based on a combination of factors, i.e. indigenous girls with disabilities, children with disabilities living in rural areas and so on - increase the vulnerability of certain groups. It has been therefore felt necessary to mention disability explicitly in the non-discrimination article. Discrimination takes place - often de facto - in various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization leads to their marginalization and exclusion, and may even threaten their survival and development if it goes as far as physical or mental violence against children with disabilities. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears, overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities and lead to the marginalization and alienation of children with disabilities. The Committee shall elaborate on these aspects in the paragraphs below.

9. In general, States parties in their efforts to prevent and eliminate all forms of discrimination against children with disabilities should take the following measures:

(a) Include explicitly disability as a forbidden ground for discrimination in constitutional provisions on non-discrimination and/or include specific prohibition of discrimination on the ground of disability in specific anti-discrimination laws or legal provisions;

(b) Provide for effective remedies in case of violations of the rights of children with disabilities, and ensure that those remedies are easily accessible to children with disabilities and their parents and/or others caring for the child;

---

[d] A/AC.265/2006/4, annex II.

**(c) Conduct awareness-raising and educational campaigns targeting the public at large and specific groups of professionals with a view to preventing and eliminating de facto discrimination against children with disabilities.**

**10. Girls with disabilities are often even more vulnerable to discrimination due to gender discrimination. In this context, States parties are requested to pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.**

## B. Article 23

**11. Paragraph 1 of article 23 should be considered as the leading principle for the implementation of the Convention with respect to children with disabilities: the enjoyment of a full and decent life in conditions that ensure dignity, promote self reliance and facilitate active participation in the community. The measures taken by States parties regarding the realization of the rights of children with disabilities should be directed towards this goal. The core message of this paragraph is that children with disabilities should be included in the society. Measures taken for the implementation of the rights contained in the Convention regarding children with disabilities, for example in the areas of education and health, should explicitly aim at the maximum inclusion of those children in society.**

**12. According to paragraph 2 of article 23 States parties to the Convention recognize the right of the child with disability to special care and shall encourage and ensure the extension of assistance to the eligible child and those responsible for his or her care. The assistance has to be appropriate to the child's condition and the circumstances of the parents or others caring for the child. Paragraph 3 of article 23 gives further rules regarding the costs of specific measures and precisions as to what the assistance should try to achieve.**

**13. In order to meet the requirements of article 23 it is necessary that States parties develop and effectively implement a comprehensive policy by means of a plan of action which not only aims at the full enjoyment of the rights enshrined in the Convention without discrimination but which also ensures that a child with disability and her or his parents and/or others caring for the child do receive the special care and assistance they are entitled to under the Convention.**

**14. Regarding the specifics of paragraphs 2 and 3 of article 23, the Committee makes the following observations:**

**(a) The provision of special care and assistance is subject to available resources and free of charge whenever possible. The Committee urges States parties to make special care and assistance to children with disabilities a matter of high priority and to invest to the maximum extent of available resources in the elimination of discrimination against children with disabilities and towards their maximum inclusion in society;**

**(b) Care and assistance shall be designed to ensure that children with disabilities have effective access to and benefit from education, training, health-care services, recovery services, preparation for employment and recreation opportunities. The Committee when dealing with specific articles of the Convention will elaborate on the measures necessary to achieve this.**

15. With reference to article 23, paragraph 4, the Committee notes that the international exchange of information between States parties in the areas of prevention and treatment is quite limited. The Committee recommends that States parties take effective, and where appropriate targeted, measures for an active promotion of information as envisaged by article 23, paragraph 4, in order to enable States parties to improve their capabilities and skills in the areas of prevention and treatment of disabilities of children.

16. It is often not clear how and to which degree the needs of developing countries are taken into account as required by article 23, paragraph 4. The Committee strongly recommends States parties to ensure that, within the framework of bilateral or multilateral development assistance, particular attention be paid to children with disabilities and their survival and development in accordance with the provisions of the Convention, for example, by developing and implementing special programmes aiming at their inclusion in society and allocating earmarked budgets to that effect. States parties are invited to provide information in their reports to the Committee on the activities and results of such international cooperation.

## III. GENERAL MEASURES OF IMPLEMENTATION (arts. 4, 42 and 44, para. 6)[e]

### A. Legislation

17. In addition to the legislative measures recommended with regard to non-discrimination (see paragraph 9 above), the Committee recommends that States parties undertake a comprehensive review of all domestic laws and related regulations in order to ensure that all provisions of the Convention are applicable to all children, including children with disabilities who should be mentioned explicitly, where appropriate. National laws and regulations should contain clear and explicit provisions for the protection and exercise of the specific rights of children with disabilities, in particular those enshrined in article 23 of the Convention.

### B. National plans of action and policies

18. The need for a national plan of action that integrates all the provisions of the Convention is a well-recognized fact and has often been a recommendation made by the Committee to States parties. Plans of action must be comprehensive, including plans and strategies for children with disabilities, and should have measurable outcomes. The draft convention on the rights of persons with disabilities, in its article 4, paragraph 1 (c), emphasizes the importance of inclusion of this aspect stating that States parties undertake "to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes".[f] It is also essential that all programmes be adequately supplied with financial and human resources and equipped

---

[e] In the present general comment the Committee focuses on the need to pay special attention to children with disabilities in the context of the general measures. For a more elaborated explanation of the content and importance of these measures, see the Committee's general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.

[f] A/AC.265/2006/4, annex II.

**with built-in monitoring mechanisms, for example, indicators allowing accurate outcome measurements. Another factor that should not be overlooked is the importance of including all children with disabilities in policies and programmes. Some States parties have initiated excellent programmes, but failed to include all children with disabilities.**

### C. Data and statistics

**19. In order to fulfil their obligations, it is necessary for States parties to set up and develop mechanisms for collecting data which are accurate, standardized and allow disaggregation, and which reflect the actual situation of children with disabilities. The importance of this issue is often overlooked and not viewed as a priority despite the fact that it has an impact not only on the measures that need to be taken in terms of prevention but also on the distribution of very valuable resources needed to fund programmes. One of the main challenges in obtaining accurate statistics is the lack of a widely accepted clear definition for disabilities. States parties are encouraged to establish an appropriate definition that guarantees the inclusion of all children with disabilities so that children with disabilities may benefit from the special protection and programmes developed for them. Extra efforts are often needed to collect data on children with disabilities because they are often hidden by their parents or others caring for the child.**

### D. Budget

**20. In the light of article 4 "… States parties shall undertake such measures to the maximum extent of their available resources …". Although the Convention does not make a specific recommendation regarding the most appropriate percentage of the State budget that should be dedicated to services and programmes for children, it does insist that children should be a priority. The implementation of this right has been a concern to the Committee since many States parties not only do not allocate sufficient resources but have also reduced the budget allocated to children over the years. This trend has many serious implications especially for children with disabilities who often rank quite low, or even not at all, on priority lists. For example, if a State party is failing to allocate sufficient funds to ensure compulsory and free quality education for all children, it will be unlikely to allocate funds to train teachers for children with disabilities or to provide for the necessary teaching aids and transportation for children with disabilities. Decentralization and privatization of services are now means of economic reform. However, it should not be forgotten that it is the ultimate responsibility of the State party to oversee that adequate funds are allocated to children with disabilities along with strict guidelines for service delivery. Resources allocated to children with disabilities should be sufficient - and earmarked so that they are not used for other purposes - to cover all their needs, including programmes established for training professionals working with children with disabilities such as teachers, physiotherapists and policymakers; education campaigns; financial support for families; income maintenance; social security; assistive devices; and related services. Furthermore, funding must also be ensured for other programmes aimed at including children with disabilities into mainstream education, inter alia by renovating schools to render them physically accessible to children with disabilities.**

### E. Coordination body: "Focal point for disabilities"

**21. Services for children with disabilities are often delivered by various governmental and non-governmental institutions and, more often than not, these services are fragmented and not coordinated which result in overlapping of functions and gaps in provisions. Therefore, the**

**setting up of an appropriate coordinating mechanism becomes essential. This body should be multisectoral, including all organizations public or private. It must be empowered and supported from the highest possible levels of Government to allow it to function at its full potential. A coordination body for children with disabilities, as part of a broader coordination system for the rights of the child or a national coordination system for persons with disabilities, would have the advantage of working within an already established system, provided this system is functioning adequately and capable of devoting the adequate financial and human resources necessary. On the other hand, a separate coordination system may help to focus attention on children with disabilities.**

### F. International cooperation and technical assistance

**22. In order to make information among States parties freely accessible and to cultivate an atmosphere of knowledge-sharing concerning, inter alia, the management and rehabilitation of children with disabilities, States parties should recognize the importance of international cooperation and technical assistance. Particular attention should be paid to developing countries that need assistance in setting up and/or funding programmes that protect and promote the rights of children with disabilitics. These countries are experiencing increasing difficulties in mobilizing the adequate resources to meet the pressing needs of persons with disabilities and would urgently need assistance in the prevention of disability, the provision of services and rehabilitation, and in the equalization of opportunities. However, in order to respond to these growing needs, the international community should explore new ways and means of raising funds, including substantial increase of resources, and take the necessary follow-up measures for mobilizing resources. Therefore, voluntary contributions from Governments, increased regional and bilateral assistance as well as contributions from private sources should also be encouraged. The United Nations Children's Fund (UNICEF) and the World Health Organization (WHO) have been instrumental in helping developing countries set up and implement specific programmes for children with disabilities. The process of knowledge exchange is also valuable in sharing updated medical knowledge and good practices, such as early identification and community-based approaches to early intervention and support to families, and addressing common challenges.**

**23. Countries that have endured, or continue to endure, internal or foreign conflict, during which land mines were laid, face a particular challenge. States parties are often not privy to plans of the sites where the land mines and unexploded ordnance were planted and the cost of mine clearance is very high. The Committee emphasizes the importance of international cooperation in accordance with the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, in order to prevent injuries and deaths caused by landmines and unexploded ordnance that remain in place. In this regard the Committee recommends that States parties closely cooperate with a view to completely removing all landmines and unexploded ordnance in areas of armed conflict and/or previous armed conflict.**

### G. Independent monitoring

**24. Both the Convention and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities recognize the importance of the establishment of an appropriate**

monitoring system.[g] The Committee has very often referred to "the Paris Principles" (General Assembly resolution 48/134) as the guidelines which national human rights institutions should follow (see the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child). National human rights institutions can take many shapes or forms such as an Ombudsman or a Commissioner and may be broad-based or specific. Whatever mechanism is chosen, it must be:

(a) Independent and provided with adequate human and financial resources;

(b) Well known to children with disabilities and their caregivers;

(c) Accessible not only in the physical sense but also in a way that allows children with disabilities to send in their complaints or issues easily and confidentially; and

(d) It must have the appropriate legal authority to receive, investigate and address the complaints of children with disabilities in a manner sensitive to both their childhood and to their disabilities.

### H. Civil society

25. Although caring for children with disabilities is an obligation of the State, NGOs often carry out these responsibilities without the appropriate support, funding or recognition from Governments. States parties are therefore encouraged to support and cooperate with NGOs enabling them to participate in the provision of services for children with disabilities and to ensure that they operate in full compliance with the provisions and principles of the Convention. In this regard the Committee draws the attention of States parties to the recommendations adopted on its day of general discussion on the private sector as a service provider, held on 20 September 2002.[h]

### I. Dissemination of knowledge and training of professionals

26. Knowledge of the Convention and its specific provisions devoted to children with disabilities is a necessary and powerful tool to ensure the realization of these rights. States parties are encouraged to disseminate knowledge by, inter alia, conducting systematic awareness-raising campaigns, producing appropriate material, such as a child friendly version of the Convention in print and Braille, and using the mass media to foster positive attitudes towards children with disabilities.

27. As for professionals working with and for children with disabilities, training programmes must include targeted and focused education on the rights of children with disabilities as a prerequisite for qualification. These professionals include but are not limited to policymakers, judges, lawyers, law enforcement officers, educators, health workers, social workers and media staff among others.

---

[g] See also the general comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights regarding persons with disabilities.

[h] CRC/C/121, paras. 630-653.

## IV. GENERAL PRINCIPLES

### Article 2 - Non-discrimination

28. See paragraphs 8 to 10 above.

### Article 3 - Best interests of the child

29. "In all actions concerning children … the best interests of the child shall be a primary consideration." The broad nature of this article aims at covering all aspects of care and protection for children in all settings. It addresses legislators who are entrusted with setting the legal framework for protecting the rights of children with disabilities as well as the decision-making processes concerning children with disabilities. Article 3 should be the basis on which programmes and policies are set and it should be duly taken into account in every service provided for children with disabilities and any other action affecting them.

30. The best interests of the child is of particular relevance in institutions and other facilities that provide services for children with disabilities as they are expected to conform to standards and regulations and should have the safety, protection and care of children as their primary consideration, and this consideration should outweigh any other and under all circumstances, for example, when allocating budgets.

### Article 6 - Right to life, survival and development

31. The inherent right to life, survival and development is a right that warrants particular attention where children with disabilities are concerned. In many countries of the world children with disabilities are subject to a variety of practices that completely or partially compromise this right. In addition to being more vulnerable to infanticide, some cultures view a child with any form of disability as a bad omen that may "tarnish the family pedigree" and, accordingly, a certain designated individual from the community systematically kills children with disabilities. These crimes often go unpunished or perpetrators receive reduced sentences. States parties are urged to undertake all the necessary measures required to put an end to these practices, including raising public awareness, setting up appropriate legislation and enforcing laws that ensure appropriate punishment to all those who directly or indirectly violate the right to life, survival and development of children with disabilities.

### Article 12 - Respect for the views of the child

32. More often than not, adults with and without disabilities make policies and decisions related to children with disabilities while the children themselves are left out of the process. It is essential that children with disabilities be heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities. In order for this principle to be respected, children should be represented in various bodies such as parliament, committees and other forums where they may voice views and participate in the making of decisions that affect them as children in general and as children with disabilities specifically. Engaging children in such a process not only ensures that the policies are targeted to their needs and desires, but also

functions as a valuable tool for inclusion since it ensures that the decision-making process is a participatory one. Children should be provided with whatever mode of communication they need to facilitate expressing their views. Furthermore, States parties should support the training for families and professionals on promoting and respecting the evolving capacities of children to take increasing responsibilities for decision-making in their own lives.

33. Children with disabilities often require special services in health and education to allow them to achieve their fullest potential and these are further discussed in the relevant paragraphs below. However it should be noted that spiritual, emotional and cultural development and well-being of children with disabilities are very often overlooked. Their participation in events and activities catering to these essential aspects of any child's life is either totally lacking or minimal. Furthermore, when their participation is invited, it is often limited to activities specifically designed for and targeted at children with disabilities. This practice only leads to further marginalization of children with disabilities and increases their feelings of isolation. Programmes and activities designed for the child's cultural development and spiritual well-being should involve and cater to both children with and without disabilities in an integrated and participatory fashion.

## V. CIVIL RIGHTS AND FREEDOMS
## (arts. 7, 8, 13-17, and 37 (a))

34. The right to name and nationality, preservation of identity, freedom of expression, freedom of thought, conscience and religion, freedom of association and peaceful assembly, the right to privacy and the right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment and not to be unlawfully deprived of liberty are all universal civil rights and freedoms which must be respected, protected and promoted for all, including children with disabilities. Particular attention should be paid here on areas where the rights of children with disabilities are more likely to be violated or where special programmes are needed for their protection.

### A. Birth registration

35. Children with disabilities are disproportionately vulnerable to non-registration at birth. Without birth registration they are not recognized by law and become invisible in government statistics. Non-registration has profound consequences for the enjoyment of their human rights, including the lack of citizenship and access to social and health services and to education. Children with disabilities who are not registered at birth are at greater risk of neglect, institutionalization, and even death.

36. In the light of article 7 of the Convention, the Committee recommends that States parties adopt all appropriate measures to ensure the registration of children with disabilities at birth. Such measures should include developing and implementing an effective system of birth registration, waiving registration fees, introducing mobile registration offices and, for children who are not yet registered, providing registration units in schools. In this context, States parties should ensure that the provisions of article 7 are fully enforced in conformity with the principles of non-discrimination (art. 2) and of the best interests of the child (art. 3).

### B. Access to appropriate information and mass media

37. Access to information and means of communication, including information and communication technologies and systems, enables children with disabilities to live independently and participate fully in all aspects of life. Children with disabilities and their caregivers should have access to information concerning their disabilities so that they can be adequately educated on the disability, including its causes, management and prognosis. This knowledge is extremely valuable as it does not only enable them to adjust and live better with their disabilities, but also allows them to be more involved in and to make informed decisions about their own care. Children with disabilities should also be provided with the appropriate technology and other services and/or languages, e.g. Braille and sign language, which would enable them to have access to all forms of media, including television, radio and printed material as well as new information and communication technologies and systems, such as the Internet.

38. On the other hand, States parties are required to protect all children, including children with disabilities from harmful information, especially pornographic material and material that promotes xenophobia or any other form of discrimination and could potentially reinforce prejudices.

### C. Accessibility to public transportation and facilities

39. The physical inaccessibility of public transportation and other facilities, including governmental buildings, shopping areas, recreational facilities among others, is a major factor in the marginalization and exclusion of children with disabilities and markedly compromises their access to services, including health and education. Although this provision may be mostly realized in developed countries, it remains largely unaddressed in the developing world. All States parties are urged to set out appropriate policies and procedures to make public transportation safe, easily accessible to children with disabilities, and free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child.

40. All new public buildings should comply with international specifications for access of persons with disabilities and existing public buildings, including schools, health facilities, governmental buildings, shopping areas, undergo necessary alterations that make them as accessible as possible.

## VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE
## (arts. 5, 18, paras. 1-2, 9-11, 19-21, 25, 27, para. 4, and 39)

### A. Family support and parental responsibilities

41. Children with disabilities are best cared for and nurtured within their own family environment provided that the family is adequately provided for in all aspects. Such support to families includes education of parent/s and siblings, not only on the disability and its causes but also on each child's unique physical and mental requirements; psychological support that is sensitive to the stress and difficulties imposed on families of children with disabilities; education on the family's common language, for example sign language, so that parents and siblings can communicate with family members with disabilities; material support in the form of special allowances as well as consumable supplies and necessary equipment, such as special furniture

and mobility devices that is deemed necessary for the child with a disability to live a dignified, self-reliant lifestyle, and be fully included in the family and community. In this context, support should also be extended to children who are affected by the disabilities of their caregivers. For example, a child living with a parent or other caregiver with disabilities should receive the support that would protect fully his or her rights and allow him or her to continue to live with this parent whenever it is in his or her best interests. Support services should also include different forms of respite care, such as care assistance in the home and day-care facilities directly accessible at community level. Such services enable parents to work, as well as relieve stress and maintain healthy family environments.

## B. Violence, abuse and neglect

42. Children with disabilities are more vulnerable to all forms of abuse be it mental, physical or sexual in all settings, including the family, schools, private and public institutions, inter alia alternative care, work environment and community at large. It is often quoted that children with disabilities are five times more likely to be victims of abuse. In the home and in institutions, children with disabilities are often subjected to mental and physical violence and sexual abuse, and they are also particularly vulnerable to neglect and negligent treatment since they often present an extra physical and financial burden on the family. In addition, the lack of access to a functional complaint receiving and monitoring mechanism is conducive to systematic and continuing abuse. School bullying is a particular form of violence that children are exposed to and more often than not, this form of abuse targets children with disabilities. Their particular vulnerability may be explained inter alia by the following main reasons:

(a) Their inability to hear, move, and dress, toilet, and bath independently increases their vulnerability to intrusive personal care or abuse;

(b) Living in isolation from parents, siblings, extended family and friends increases the likelihood of abuse;

(c) Should they have communication or intellectual impairments, they may be ignored, disbelieved or misunderstood should they complain about abuse;

(d) Parents or others taking care of the child may be under considerable pressure or stress because of physical, financial and emotional issues in caring for their child. Studies indicate that those under stress may be more likely to commit abuse;

(e) Children with disabilities are often wrongly perceived as being non-sexual and not having an understanding of their own bodies and, therefore, they can be targets of abusive people, particularly those who base abuse on sexuality.

43. In addressing the issue of violence and abuse, States parties are urged to take all necessary measures for the prevention of abuse of and violence against children with disabilities, such as:

(a) Train and educate parents or others caring for the child to understand the risks and detect the signs of abuse of the child;

**(b) Ensure that parents are vigilant about choosing caregivers and facilities for their children and improve their ability to detect abuse;**

**(c) Provide and encourage support groups for parents, siblings and others taking care of the child to assist them in caring for their children and coping with their disabilities;**

**(d) Ensure that children and caregivers know that the child is entitled as a matter of right to be treated with dignity and respect and they have the right to complain to appropriate authorities if those rights are breached;**

**(e) Ensure that schools take all measures to combat school bullying and pay particular attention to children with disabilities providing them with the necessary protection while maintaining their inclusion into the mainstream education system;**

**(f) Ensure that institutions providing care for children with disabilities are staffed with specially trained personnel, subject to appropriate standards, regularly monitored and evaluated, and have accessible and sensitive complaint mechanisms;**

**(g) Establish an accessible, child-sensitive complaint mechanism and a functioning monitoring system based on the Paris Principles (see paragraph 24 above);**

**(h) Take all necessary legislative measures required to punish and remove perpetrators from the home ensuring that the child is not deprived of his or her family and continue to live in a safe and healthy environment;**

**(i) Ensure the treatment and reintegration of victims of abuse and violence with a special focus on their overall recovery programmes.**

**44. In this context the Committee would also like to draw States parties' attention to the report of the independent expert for the United Nations study on violence against children[1] which refers to children with disabilities as a group of children especially vulnerable to violence. The Committee encourages States parties to take all appropriate measures to implement the overarching recommendations and setting-specific recommendations contained in this report.**

## C. Family-type alternative care

**45. The role of the extended family, which is still a main pillar of childcare in many communities and is considered one of the best alternatives for childcare, should be strengthened and empowered to support the child and his or her parents or others taking care of the child.**

**46. Recognizing that the foster family is an accepted and practiced form of alternative care in many States parties, it is nevertheless a fact that many foster families are reluctant to take on the care of a child with disability as children with disabilities often pose a challenge in the extra care**

---

[1] **A/61/299.**

they may need and the special requirements in their physical, psychological and mental upbringing. Organizations that are responsible for foster placement of children must, therefore, conduct the necessary training and encouragement of suitable families and provide the support that will allow the foster family to appropriately take care of the child with disability.

## D. Institutions

47. The Committee has often expressed its concern at the high number of children with disabilities placed in institutions and that institutionalization is the preferred placement option in many countries. The quality of care provided, whether educational, medical or rehabilitative, is often much inferior to the standards necessary for the care of children with disabilities either because of lack of identified standards or lack of implementation and monitoring of these standards. Institutions are also a particular setting where children with disabilities are more vulnerable to mental, physical, sexual and other forms of abuse as well as neglect and negligent treatment (see paragraphs 42-44 above). The Committee therefore urges States parties to use the placement in institution only as a measure of last resort, when it is absolutely necessary and in the best interests of the child. It recommends that the States parties prevent the use of placement in institution merely with the goal of limiting the child's liberty or freedom of movement. In addition, attention should be paid to transforming existing institutions, with a focus on small residential care facilities organized around the rights and needs of the child, to developing national standards for care in institutions, and to establishing rigorous screening and monitoring procedures to ensure effective implementation of these standards.

48. The Committee is concerned at the fact that children with disabilities are not often heard in separation and placement processes. In general, decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching impact on the child's life and future. Therefore, the Committee recommends that States parties continue and strengthen their efforts to take into consideration the views of children with disabilities and facilitate their participation in all matters affecting them within the evaluation, separation and placement process in out-of-home care, and during the transition process. The Committee also emphasizes that children should be heard throughout the protection measure process, before making the decision as well as during and after its implementation. In this context, the Committee draws the attention of the States parties to the Committee's recommendations adopted on its day of general discussion on children without parental care, held on 16 September 2005.[J]

49. In addressing institutionalization, States parties are therefore urged to set up programmes for deinstitutionalization of children with disabilities, replacing them with their families, extended families or foster care system. Parents and other extended family members should be provided with the necessary and systematic support/training for including their child back into their home environment.

---

[J] CRC/C/153, paras. 636-689.

### E. Periodic review of placement

50. Whatever form of placement chosen for children with disabilities by the competent authorities, it is essential that a periodic review of the treatment provided to the child, and all other circumstances relevant to his or her placement, is carried out to monitor his or her well-being.

## VII. BASIC HEALTH AND WELFARE
## (arts. 6, 18, paras. 3, 23, 24, 26, and 27, paras. 1-3)

### A. Right to health

51. Attainment of the highest possible standard of health as well as access and affordability of quality health care is an inherent right for all children. Children with disabilities are often left out because of several challenges, including discrimination, inaccessibility due to the lack of information and/or financial resources, transportation, geographic distribution and physical access to health-care facilities. Another factor is the absence of targeted health-care programmes that address the specific needs of children with disabilities. Health policies should be comprehensive and address early detection of disabilities, early intervention, including psychological and physical treatment, rehabilitation including physical aids, for example limb prosthesis, mobility devices, hearing aids and visual aids.

52. It is important to emphasize that health services should be provided within the same public health system that provides for children with no disabilities, free of charge, whenever possible, and as updated and modernized as possible. The importance of community-based assistance and rehabilitation strategies should be emphasized when providing health services for children with disabilities. States parties must ensure that health professionals working with children with disabilities are trained to the highest possible standard and practice based on a child-centred approach. In this respect, many States parties would greatly benefit from international cooperation with international organizations as well as other States parties.

### B. Prevention

53. Causes of disabilities are multiple and, therefore, the quality and level of prevention vary. Inherited diseases that often cause disabilities can be prevented in some societies that practice consanguineous marriages and under such circumstances public awareness and appropriate preconception testing would be recommended. Communicable diseases are still the cause of many disabilities around the world and immunization programmes need to be stepped up aiming to achieve universal immunization against all preventable communicable diseases. Poor nutrition has a long-term impact upon children's development and it can lead to disabilities, such as blindness caused by Vitamin A deficiency. The Committee recommends that States parties introduce and strengthen prenatal care for children and ensure adequate quality of the assistance given during the delivery. It also recommends that States parties provide adequate post-natal health-care services and develop campaigns to inform parents and others caring for the child about basic child health care and nutrition. In this regard, the Committee also recommends that the States parties continue to cooperate and seek technical assistance with, among others, WHO and UNICEF.

**54. Domestic and road traffic accidents are a major cause of disability in some countries and policies of prevention need to be established and implemented such as the laws on seat belts and traffic safety. Lifestyle issues, such as alcohol and drug abuse during pregnancy, are also preventable causes of disabilities and in some countries the fetal alcohol syndrome presents a major cause for concern. Public education, identification and support for pregnant mothers who may be abusing such substances are just some of the measures that may be taken to prevent such causes of disability among children. Hazardous environment toxins also contribute to the causes of many disabilities. Toxins, such as lead, mercury, asbestos, etc., are commonly found in most countries. Countries should establish and implement policies to prevent dumping of hazardous materials and other means of polluting the environment. Furthermore, strict guidelines and safeguards should also be established to prevent radiation accidents.**

**55. Armed conflicts and their aftermath, including availability and accessibility of small arms and light weapons, are also major causes of disabilities. States parties are obliged to take all necessary measures to protect children from the detrimental effects of war and armed violence and to ensure that children affected by armed conflict have access to adequate health and social services, including psychosocial recovery and social reintegration. In particular, the Committee stresses the importance of educating children, parents and the public at large about the dangers of landmines and unexploded ordnance in order to prevent injury and death. It is crucial that States parties continue to locate landmines and unexploded ordnance, take measures to keep children away from suspected areas, and strengthen their mine clearance activities and, when appropriate, seek the necessary technical and financial support within a framework of international cooperation, including from United Nations agencies. (See also paragraph 23 above on landmines and unexploded ordnance and paragraph 78 below on armed conflicts under special protection measures.)**

### C. Early identification

**56. Very often, disabilities are detected quite late in the child's life, which deprives him or her of effective treatment and rehabilitation. Early identification requires high awareness among health professionals, parents, teachers as well as other professionals working with children. They should be able to identify the earliest signs of disability and make the appropriate referrals for diagnosis and management. Therefore, the Committee recommends that States parties establish systems of early identification and early intervention as part of their health services, together with birth registration and procedures for following the progress of children identified with disabilities at an early age. Services should be both community- and home-based, and easy to access. Furthermore, links should be established between early intervention services, preschools and schools to facilitate the smooth transition of the child.**

**57. Following identification, the systems in place must be capable of early intervention including treatment and rehabilitation providing all necessary devices that enable children with disabilities to achieve their full functional capacity in terms of mobility, hearing aids, visual aids, and prosthetics among others. It should also be emphasized that these provisions should be offered free of cost, whenever possible, and the process of acquiring such services should be efficient and simple avoiding long waits and bureaucracies.**

### D. Multidisciplinary care

58. Children with disabilities very often have multiple health issues that need to be addressed in a team approach. Very often, many professionals are involved in the care of the child, such as neurologists, psychologists, psychiatrists, orthopaedic surgeons and physiotherapists among others. Ideally these professionals should collectively identify a plan of management for the child with disability that would ensure the most efficient health care is provided.

### E. Adolescent health and development

59. The Committee notes that children with disabilities are, particularly during their adolescence, facing multiple challenges and risks in the area of establishing relationships with peers and reproductive health. Therefore, the Committee recommends that States parties provide adolescents with disabilities with adequate, and where appropriate, disability specific information, guidance and counselling and fully take into account the Committee's general comments No. 3 (2003) on HIV/AIDS and the rights of the child and No. 4 (2003) on adolescent health and development in the context of the Convention.

60. The Committee is deeply concerned about the prevailing practice of forced sterilization of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse lifelong physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilization of children on grounds of disability.

### F. Research

61. Causes, prevention and management of disabilities do not receive the much needed attention on national and international research agendas. States parties are encouraged to award this issue priority status ensuring funding and monitoring of disability focused research paying particular attention to ethical implications.

## VIII. EDUCATION AND LEISURE
## (arts. 28, 29 and 31)

### A. Quality education

62. Children with disabilities have the same right to education as all other children and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in the Convention.[k] For this purpose, effective access of children with disabilities to education has

---

[k] In this context the Committee would like to make a reference to the United Nations Millennium Declaration (General Assembly resolution 55/2) and in particular to the Millennium Development Goal No. 2 relating to universal primary education according to which Governments are committed to "ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education". The Committee would also like to refer to other international commitments which endorse the idea of inclusive education, inter alia, the Salamanca Statement and Framework for Action on Special Needs Education adopted by the

to be ensured to promote "the development of the child's personality, talents and mental and physical abilities to their fullest potential (see articles 28 and 29 of the Convention and the Committee's general comment No. 1 (2001) on the aims of education). The Convention recognizes the need for modification to school practices and for training of regular teachers to prepare them to teach children with diverse abilities and ensure that they achieve positive educational outcomes.

63. As children with disabilities are very different from each other, parents, teachers and other specialized professionals have to help each individual child to develop his or her ways and skills of communication, language, interaction, orientation and problem-solving which best fit the potential of this child. Each person who furthers the child's skills, abilities and self-development, has to precisely observe the child's progress and carefully listen to the child's verbal and emotional communication in order to support education and development in a well-targeted and most appropriate manner.

### B. Self-esteem and self-reliance

64. It is crucial that the education of a child with disability includes the strengthening of positive self-awareness, making sure that the child feels he or she is respected by others as a human being without any limitation of dignity. The child must be able to observe that others respect him or her and recognize his or her human rights and freedoms. Inclusion of the child with disability in the groups of children of the classroom can show the child that he or she has recognized identity and belongs to the community of learners, peers, and citizens. Peer support enhancing self-esteem of children with disabilities should be more widely recognized and promoted. Education also has to provide the child with empowering experience of control, achievement, and success to the maximum extent possible for the child.

### C. Education in the school system

65. Early childhood education is of particular relevance for children with disabilities as often their disabilities and special needs are first recognized in these institutions. Early intervention is of utmost importance to help children to develop their full potential. If a child is identified as having a disability or developmental delay at an early stage, the child has much better opportunities to benefit from early childhood education which should be designed to respond to her or his individual needs. Early childhood education provided by the State, the community or civil society institutions can provide important assistance to the well-being and development of all children with disabilities (see the Committee's general comment No. 7 (2005) on implementing child rights in early childhood). Primary education, including primary school and, in many States parties, also secondary school, has to be provided for children with disabilities free of costs. All schools should be without communicational barriers as well as physical barriers

---

World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7-10 June 1994 (UNESCO and Ministry of Education and Science of Spain) and the Dakar Framework for Action, Education for All: Meeting our Collective Commitments, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000.

impeding the access of children with reduced mobility. Also higher education, accessible on the basis of capacities, has to be accessible for qualified adolescents with disabilities. In order to fully exercise their right to education, many children need personal assistance, in particular, teachers trained in methodology and techniques, including appropriate languages, and other forms of communication, for teaching children with a diverse range of abilities capable of using child-centred and individualized teaching strategies, and appropriate and accessible teaching materials, equipment and assistive devices, which States parties should provide to the maximum extent of available resources.

### D. Inclusive education

66. Inclusive education[1] should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system. The Committee notes the explicit commitment towards the goal of inclusive education contained in the draft convention on the rights of persons with disabilities and the obligation for States to ensure that persons including children with disabilities are not excluded from the general education system on the basis of disability and that they receive the support required, within the general education system, to facilitate their effective education. It encourages States parties which have not yet begun a programme towards inclusion to introduce the necessary measures to achieve this goal. However, the Committee underlines that the extent of inclusion within the general education system may vary. A continuum of services and programme options must be maintained in circumstances where fully inclusive education is not feasible to achieve in the immediate future.

67. The movement towards inclusive education has received much support in recent years. However, the term inclusive may have different meanings. At its core, inclusive education is a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students. This goal can be achieved by different organizational means which respect the diversity of children. Inclusion may range from full-time placement of all students with disabilities into one regular classroom or placement into the regular class room with varying degree of inclusion, including a certain portion of special education. It is important to understand that inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges

---

[1] UNESCO's Guidelines for Inclusion: Ensuring Access to Education for All (UNESCO 2005) provides the following definition "Inclusion is seen as a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children … Inclusion is concerned with the identification and removal of barriers …" (pp. 13 and 15).

and needs. Close cooperation among special educators and regular educators is essential. School curricula must be re-evaluated and developed to meet the needs of children with and without disabilities. Modification in training programmes for teachers and other personnel involved in the educational system must be achieved in order to fully implement the philosophy of inclusive education.

### E. Career education and vocational training

68. Education for career development and transition is for all persons with disabilities regardless of their age. It is imperative to begin preparation at an early age because career development is seen as a process that begins early and continues throughout life. Developing career awareness and vocational skills as early as possible, beginning in the elementary school, enables children to make better choices later in life in terms of employment. Career education in the elementary school does not mean using young children to perform labour that ultimately opens the door for economic exploitation. It begins with students choosing goals according to their evolving capacities in the early years. It should then be followed by a functional secondary school curriculum that offers adequate skills and access to work experience, under systematic coordination and monitoring between the school and the workplace.

69. Career development and vocational skills should be included in the school curriculum. Career awareness and vocational skills should be incorporated into the years of compulsory education. In countries where compulsory education does not go beyond the elementary school years, vocational training beyond elementary school should be mandatory for children with disabilities. Governments must establish policies and allocate sufficient funds for vocational training.

### F. Recreation and cultural activities

70. The Convention stipulates in article 31 the right of the child to recreation and cultural activities appropriate to the age of the child. This article should be interpreted to include mental, psychological as well as the physical ages and capabilities of the child. Play has been recognized as the best source of learning various skills, including social skills. The attainment of full inclusion of children with disabilities in the society is realized when children are given the opportunity, places, and time to play with each other (children with disabilities and no disabilities). Training for recreation, leisure and play should be included for school-aged children with disabilities.

71. Children with disabilities should be provided with equal opportunities to participate in various cultural and arts activities as well as sports. These activities must be viewed as both medium of expression and medium of realizing self-satisfying, quality of life.

### G. Sports

72. Competitive and non-competitive sports activities must be designed to include children with disabilities in an inclusive manner, whenever possible. That is to say, a child with a disability who is able to compete with children with no disability should be encouraged and supported to do so. But sports are an area where, because of the physical demands of the sport, children with disabilities will often need to have exclusive games and activities where they can

compete fairly and safely. It must be emphasized though that when such exclusive events take place, the media must play its role responsibly by giving the same attention as it does to sports for children with no disabilities.

## IX. SPECIAL PROTECTION MEASURES
## (arts. 22, 38, 39, 40, 37 (b)-(d), and 32-36)

### A. Juvenile justice system

73. In the light of article 2 States parties have the obligation to ensure that children with disabilities who are in conflict with the law (as described in article 40, paragraph 1) will be protected not only by the provisions of the Convention which specifically relate to juvenile justice (arts. 40, 37 and 39), but by all other relevant provisions and guarantees contained in the Convention, for example in the area of health care and education. In addition, States parties should take where necessary specific measures to ensure that children with disabilities de facto are protected by and do benefit from the rights mentioned above.

74. With reference to the rights enshrined in article 23 of the Convention and given the high level of vulnerability of children with disabilities, the Committee recommends - in addition to the general recommendation made in paragraph 73 above - that the following elements of the treatment of children with disabilities (allegedly) in conflict with the law be taken into account:

(a) A child with disability who comes in conflict with the law should be interviewed using appropriate languages and otherwise dealt with by professionals such as police officers, attorneys/advocates/social workers, prosecutors and/or judges, who have received proper training in this regard;

(b) Governments should develop and implement alternative measures with a variety and a flexibility that allow for an adjustment of the measure to the individual capacities and abilities of the child in order to avoid the use of judicial proceedings. Children with disabilities in conflict with the law should be dealt with as much as possible without resorting to formal/legal procedures. Such procedures should only be considered when necessary in the interest of public order. In those cases special efforts have to be made to inform the child about the juvenile justice procedure and his or her rights therein;

(c) Children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pretrial detention nor by way of a punishment. Deprivation of liberty should only be applied if necessary with a view to providing the child with adequate treatment for addressing his or her problems which have resulted in the commission of a crime and the child should be placed in an institution that has the specially trained staff and other facilities to provide this specific treatment. In making such decisions the competent authority should make sure that the human rights and legal safeguards are fully respected.

### B. Economic exploitation

75. Children with disabilities are particularly vulnerable to different forms of economic exploitation, including the worst forms of child labour as well as drug trafficking and begging. In this context, the Committee recommends that States parties which have not yet done so ratify Convention No. 138 (1973) of the International Labour Organization concerning the minimum

age for admission to employment and Convention No. 182 (1999) concerning the prohibition of and immediate action for the elimination of the worst forms of child labour. In the implementation of these conventions States parties should pay special attention to the vulnerability and needs of children with disabilities.

### C. Street children

76. Children with disabilities, specifically physical disabilities, often end up on the streets for a variety of reasons, including economic and social factors. Children with disabilities living and/or working on the streets need to be provided with adequate care, including nutrition, clothing, housing, educational opportunities, life-skills training as well as protection from the different dangers, including economic and sexual exploitation. In this regard an individualized approach is necessary which takes full account of the special needs and the capacities of the child. The Committee is particularly concerned that children with disabilities are sometimes exploited for the purpose of begging in the streets or elsewhere; sometimes disabilities are inflicted on children for the purpose of begging. States parties are required to take all necessary actions to prevent this form of exploitation and to explicitly criminalize exploitation in such manner and take effective measures to bring the perpetrators to justice.

### D. Sexual exploitation

77. The Committee has often expressed grave concern at the growing number of child victims of child prostitution and child pornography. Children with disabilities are more likely than others to become victims of these serious crimes. Governments are urged to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography and, in fulfilling their obligations to the Optional Protocol, States parties should pay particular attention to the protection of children with disabilities recognizing their particular vulnerability.

### E. Children in armed conflict

78. As previously noted above, armed conflicts are a major cause of disabilities whether children are actually involved in the conflict or are victims of combat. In this context, Governments are urged to ratify and implement the Optional Protocol on the involvement of children in armed conflict. Special attention should be paid to the recovery and social reintegration of children who suffer disabilities as a result of armed conflicts. Furthermore, the Committee recommends that States parties explicitly exclude children with disabilities from recruitment in armed forces and take the necessary legislative and other measures to fully implement that prohibition.

### F. Refugee and internally displaced children, children belonging to minorities and indigenous children

79. Certain disabilities result directly from the conditions that have led some individuals to become refugees or internally displaced persons, such as human-caused or natural disasters. For example, landmines and unexploded ordnance kill and injure refugee, internally displaced and resident children long after armed conflicts have ceased. Refugee and internally displaced children with disabilities are vulnerable to multiple forms of discrimination, particularly refugee and internally displaced girls with disabilities, who are more often than boys subject to abuse, including sexual abuse, neglect and exploitation. The Committee strongly emphasizes

**that refugee and internally displaced children with disabilities should be given high priority for special assistance, including preventative assistance, access to adequate health and social services, including psychosocial recovery and social reintegration. The Office of the United Nations High Commissioner for Refugees (UNHCR) has made children a policy priority and adopted several documents to guide its work in that area, including the Guidelines on Refugee Children in 1988, which are incorporated into UNHCR Policy on Refugee Children. The Committee also recommends that States parties take into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside of their country of origin.**

**80. All appropriate and necessary measures undertaken to protect and promote the rights of children with disabilities must include and pay special attention to the particular vulnerability and needs of children belonging to minorities and indigenous children who are more likely to be already marginalized within their communities. Programmes and policies must always be culturally and ethnically sensitive.**

## Annex IV

## GENERAL COMMENT No. 10 (2007)

### Children's rights in juvenile justice

## I. INTRODUCTION

1. In the reports they submit to the Committee on the Rights of the Child ("the Committee"), States parties often pay quite detailed attention to the rights of children alleged as, accused of, or recognized as having infringed the penal law, also referred to as "children in conflict with the law". In line with the Committee's guidelines for periodic reporting, the implementation of articles 37 and 40 of the Convention on the Rights of the Child ("the Convention") is the main focus of the information provided by the States parties. The Committee notes with appreciation the many efforts to establish an administration of juvenile justice in compliance with the Convention. However, it is also clear that many States parties still have a long way to go in achieving full compliance with the Convention, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort.

2. The Committee is equally concerned about the lack of information on the measures that States parties have taken to prevent children from coming into conflict with the law. This may be the result of a lack of a comprehensive policy for the field of juvenile justice. This may also explain why many States parties are providing only very limited statistical data on the treatment of children in conflict with the law.

3. The experience in reviewing the performance of States parties in the field of juvenile justice is the reason for the present general comment, by which the Committee wants to provide the States parties with more elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with the Convention. This juvenile justice which should promote, inter alia, the use of alternative measures such as diversion and restorative justice will provide States parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short- and long-term interest of society at large.

## II. OBJECTIVES OF THE GENERAL COMMENT

4. At the outset, the Committee wishes to underscore that the Convention requires States parties to develop and implement a comprehensive juvenile justice policy. This comprehensive approach should not be limited to the implementation of the specific provisions contained in articles 37 and 40 of the Convention, but should also take into account the general principles enshrined in articles 2, 3, 6 and 12, and in all other relevant articles of the Convention, such as articles 4 and 39. Therefore, the objectives of the present general comment are:

(a) To encourage States parties to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with the Convention, and to seek in this regard advice and support from the Interagency Panel on Juvenile Justice, with representatives of the Office of the United Nations High Commissioner for

Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC) and non-governmental organizations (NGOs), established by Economic and Social Council resolution 1997/30;

(b) To provide States parties with guidance and recommendations for the content of this comprehensive juvenile justice policy, with special attention to prevention of juvenile delinquency, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures, and for the interpretation and implementation of all other provisions contained in articles 37 and 40 of the Convention;

(c) To promote the integration, in a national and comprehensive juvenile justice policy, of other international standards, in particular, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules"), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines").

## III. JUVENILE JUSTICE: THE LEADING PRINCIPLES OF A COMPREHENSIVE POLICY

5. Before elaborating on the requirements of the Convention in more detail, the Committee will first mention the leading principles of a comprehensive policy for juvenile justice. In the administration of juvenile justice, States parties have to apply systematically the general principles contained in articles 2, 3, 6 and 12 of the Convention, as well as the fundamental principles of juvenile justice enshrined in articles 37 and 40.

### A. Non-discrimination

### (art. 2)

6. States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In this regard, training of all professionals involved in the administration of juvenile justice is important (see paragraph 97 below), as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation.

7. Many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia, as by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society (art. 40, para. 1).

8. It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization. These acts, also known as status offences, are not considered to be such if committed by adults. The Committee recommends that

the States parties abolish the provisions on status offences in order to establish an equal treatment under the law for children and adults. In this regard, the Committee also refers to article 56 of the Riyadh Guidelines which reads: "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person."

9. In addition, behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour.

### B. Best interests of the child
### (art. 3)

10. In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.

### C. The right to life, survival and development
### (art. 6)

11. This inherent right of every child should guide and inspire States parties in the development of effective national policies and programmes for the prevention of juvenile delinquency, because it goes without saying that delinquency has a very negative impact on the child's development. Furthermore, this basic right should result in a policy of responding to juvenile delinquency in ways that support the child's development. The death penalty and a life sentence without parole are explicitly prohibited under article 37 (a) of the Convention (see paragraphs 75 to 77 below). The use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37 (b) explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured (see paragraphs 78 to 88 below).[a]

---

[a] Note that the rights of a child deprived of his/her liberty, as recognized in the Convention, apply with respect to children in conflict with the law, and to children placed in institutions for the purposes of care, protection or treatment, including mental health, educational, drug treatment, child protection or immigration institutions.

## D. The right to be heard
## (art. 12)

12. The right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice (see paragraphs 43 to 45 below). The Committee notes that the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights.

## E. Dignity
## (art. 40, para. 1)

13. The Convention provides a set of fundamental principles for the treatment to be accorded to children in conflict with the law:

(a) *Treatment that is consistent with the child's sense of dignity and worth.* This principle reflects the fundamental human right enshrined in article 1 of the Universal Declaration of Human Rights, which stipulates that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of the Convention makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child;

(b) *Treatment that reinforces the child's respect for the human rights and freedoms of others.* This principle is in line with the consideration in the preamble that a child should be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations. It also means that, within the juvenile justice system, the treatment and education of children shall be directed to the development of respect for human rights and freedoms (article 29, paragraph 1 (b) of the Convention and general comment No. 1 (2001) on the aims of education). It is obvious that this principle of juvenile justice requires a full respect for and implementation of the guarantees for a fair trial recognized in article 40, paragraph 2 of the Convention (see paragraphs 40 to 67 below). If the key actors in juvenile justice, such as police officers, prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?;

(c) *Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society.* This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children;

(d) *Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.* Reports received by the Committee show that violence occurs in all phases of the juvenile justice process, from the first contact with the police, during pretrial detention and during the stay in treatment and other facilities for children sentenced to deprivation of liberty. The Committee urges the States parties to take effective measures to prevent such violence and to make sure that the perpetrators are brought to justice and to give effective follow-up to the recommendations made in the report on the United Nations study on violence against children presented to the General Assembly in October 2006.[b]

14. The Committee acknowledges that the preservation of public safety is a legitimate aim of the justice system. However, it is of the opinion that this aim is best served by a full respect for and implementation of the leading and overarching principles of juvenile justice as enshrined in the Convention.

## IV. JUVENILE JUSTICE: THE CORE ELEMENTS OF A COMPREHENSIVE POLICY

15. A comprehensive policy for juvenile justice must deal with the following core elements: the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age-limits for juvenile justice; the guarantees for a fair trial; and deprivation of liberty, including pretrial detention and post-trial incarceration.

### A. Prevention of juvenile delinquency

16. One of the most important goals of the implementation of the Convention is to promote the full and harmonious development of the child's personality, talents and mental and physical abilities (preamble, and articles 6 and 29). The child should be prepared to live an individual and responsible life in a free society (preamble, and article 29), in which he/she can assume a constructive role with respect for human rights and fundamental freedoms (arts. 29 and 40). In this regard, parents have the responsibility to provide the child, in a manner consistent with his evolving capacities, with appropriate direction and guidance in the exercise of her/his rights as recognized in the Convention. In the light of these and other provisions of the Convention, it is obviously not in the best interests of the child if he/she grows up in circumstances that may cause an increased or serious risk of becoming involved in criminal activities. Various measures should be taken for the full and equal implementation of the rights to an adequate standard of living (art. 27), to the highest attainable standard of health and access to health care (art. 24), to education (arts. 28 and 29), to protection from all forms of physical or mental violence, injury or abuse (art. 19), and from economic or sexual exploitation (arts. 32 and 34), and to other appropriate services for the care or protection of children.

17. As stated above, a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings. States parties should fully integrate into their comprehensive national policy for juvenile justice the United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines") adopted by the General Assembly in its resolution 45/112 of 14 December 1990.

---

[b] A/61/299.

18. The Committee fully supports the Riyadh Guidelines and agrees that emphasis should be placed on prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. This means, inter alia that prevention programmes should focus on support for particularly vulnerable families, the involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out of school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents are recommended. The States parties should also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families.

19. Articles 18 and 27 of the Convention confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time the Convention requires States parties to provide the necessary assistance to parents (or other caretakers), in the performance of their parental responsibilities. The measures of assistance should not only focus on the prevention of negative situations, but also and even more on the promotion of the social potential of parents. There is a wealth of information on home- and family-based prevention programmes, such as parent training, programmes to enhance parent-child interaction and home visitation programmes, which can start at a very young age of the child. In addition, early childhood education has shown to be correlated with a lower rate of future violence and crime. At the community level, positive results have been achieved with programmes such as Communities that Care, a risk-focused prevention strategy.

20. States parties should fully promote and support the involvement of children, in accordance with article 12 of the Convention, and of parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social workers), in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes.

21. The Committee recommends that States parties seek support and advice from the Interagency Panel on Juvenile Justice in their efforts to develop effective prevention programmes.

### B. Interventions/diversion (see also section E below)

22. Two kinds of interventions can be used by the State authorities for dealing with children alleged as, accused of, or recognized as having infringed the penal law: measures without resorting to judicial proceedings and measures in the context of judicial proceedings. The Committee reminds States parties that utmost care must be taken to ensure that the child's human rights and legal safeguards are thereby fully respected and protected.

23. Children in conflict with the law, including child recidivists, have the right to be treated in ways that promote their reintegration and the child's assuming a constructive role in society (art. 40, para. 1). The arrest, detention or imprisonment of a child may be used only as a measure of last resort (art. 37 (b)). It is, therefore, necessary - as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of measures to ensure that children are

dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care (art. 40, para. 4).

### 1. Interventions without resorting to judicial proceedings

24. According to article 40, paragraph 3, of the Convention, the States parties shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable. Given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases.

25. In the opinion of the Committee, the obligation of States parties to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings applies, but is certainly not limited to children who commit minor offences, such as shoplifting or other property offences with limited damage, and first-time child offenders. Statistics in many States parties indicate that a large part, and often the majority, of offences committed by children fall into these categories. It is in line with the principles set out in article 40, paragraph 1, of the Convention to deal with all such cases without resorting to criminal law procedures in court. In addition to avoiding stigmatization, this approach has good results for children and is in the interests of public safety, and has proven to be more cost-effective.

26. States parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system, and ensure that children's human rights and legal safeguards are thereby fully respected and protected (art. 40, para. 3 (b)).

27. It is left to the discretion of States parties to decide on the exact nature and content of the measures for dealing with children in conflict with the law without resorting to judicial proceedings, and to take the necessary legislative and other measures for their implementation. Nonetheless, on the basis of the information provided in the reports from some States parties, it is clear that a variety of community-based programmes have been developed, such as community service, supervision and guidance by for example social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims. Other States parties should benefit from these experiences. As far as full respect for human rights and legal safeguards is concerned, the Committee refers to the relevant parts of article 40 of the Convention and emphasizes the following:

(a) Diversion (i.e. measures for dealing with children, alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings) should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding;

**(b)** The child must freely and voluntarily give consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. With a view to strengthening parental involvement, States parties may also consider requiring the consent of parents, in particular when the child is under the age of 16;

**(c)** The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination;

**(d)** The child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities and on the possibility of review of the measure;

**(e)** The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as "criminal records" and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time, e.g. for a maximum of one year, to the competent authorities authorized to deal with children in conflict with the law.

### 2. Interventions in the context of judicial proceedings

28. When judicial proceedings are initiated by the competent authority (usually the prosecutor's office), the principles of a fair and just trial must be applied (see section D below). At the same time, the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pretrial detention, as a measure of last resort. In the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b)). This means that States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.

29. The Committee reminds States parties that, pursuant to article 40, paragraph 1, of the Convention, reintegration requires that no action may be taken that can hamper the child's full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society.

## C. Age and children in conflict with the law

### 1. The minimum age for criminal responsibility

30. The reports submitted by States parties show the existence of a wide range of minimum ages for criminal responsibility. They range from a very low level of age 7 or 8 to the

commendable high level of age 14 or 16. Quite a few States parties use two minimum ages for criminal responsibility. Children in conflict with the law who at the time of the commission of the crime are at or above the lower minimum age but under the higher minimum age are assumed to be criminally responsible only if they have the required maturity in that regard. The assessment of this maturity is left to the court/judge, often without the requirement of involving a psychological expert, and results in practice in the use of the lower minimum age in cases of serious crimes. The system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices. In the light of this wide range of minimum ages for criminal responsibility the Committee feels that there is a need to provide the States parties with clear guidance and recommendations regarding the minimum age of criminal responsibility.

31. Article 40, paragraph 3, of the Convention requires States parties to seek to promote, inter alia, the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, but does not mention a specific minimum age in this regard. The Committee understands this provision as an obligation for States parties to set a minimum age for criminal responsibility. This minimum age means the following:

(a) Children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Even (very) young children do have the capacity to infringe the penal law but if they commit an offence when under the minimum age for criminal responsibility the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. For these children special protective measures can be taken if necessary in their best interests;

(b) Children at or above the minimum age for criminal responsibility at the time of the commission of an offence (or infringement of the penal law) but younger than 18 (see also paragraphs 35 to 38 below) can be formally charged and subject to penal law procedures. But these procedures, including the final outcome, must be in full compliance with the principles and provisions of the Convention as elaborated in the present general comment.

32. Rule 4 of the Beijing Rules recommends that the beginning of minimum age for criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States parties not to set a minimum age for criminal responsibility at a too low level and to increase the existing low minimum age for criminal responsibility to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age for criminal responsibility under the age of 12 is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower minimum age for criminal responsibility to the age of 12 as the absolute minimum age and to continue to increase it to a higher age level.

33. At the same time, the Committee urges States parties not to lower their minimum age for criminal responsibility to the age of 12. A higher minimum age for criminal responsibility, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40, paragraph 3 (b), of the Convention, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected. In this regard, States parties should inform the Committee in their reports in specific detail how children below the minimum age for criminal responsibility set in

their laws are treated when they are recognized as having infringed the penal law, or are alleged as or accused of having done so, and what kinds of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above the minimum age for criminal responsibility.

34. The Committee wishes to express its concern about the practice of allowing exceptions to a minimum age for criminal responsibility which permit the use of a lower minimum age of criminal responsibility in cases where the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible. The Committee strongly recommends that States parties set a minimum age for criminal responsibility that does not allow, by way of exception, the use of a lower age.

35. If there is no proof of age and it cannot be established that the child is at or above the minimum age for criminal responsibility, the child shall not be held criminally responsible (see also paragraph 39 below).

### 2. The upper age-limit for juvenile justice

36. The Committee also wishes to draw the attention of States parties to the upper age-limit for the application of the rules of juvenile justice. These special rules - in terms both of special procedural rules and of rules for diversion and special measures - should apply, starting at the minimum age for criminal responsibility set in the country, for all children who, at the time of their alleged commission of an offence (or act punishable under the criminal law), have not yet reached the age of 18.

37. The Committee wishes to remind States parties that they have recognized the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in accordance with the provisions of article 40 of the Convention. This means that every person under the age of 18 at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.

38. The Committee, therefore, recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower), or which allow by way of exception that 16- or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18. The Committee notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception.

39. Finally, the Committee wishes to emphasize the fact that it is crucial for the full implementation of article 7 of the Convention requiring, inter alia, that every child shall be registered immediately after birth to set age-limits one way or another, which is the case for all States parties. A child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice regarding the family, work, education and labour, particularly within the juvenile justice system. Every child must be provided with a birth certificate free of charge whenever he/she needs it to prove his/her age. If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt.

## D. The guarantees for a fair trial

40. Article 40, paragraph 2, of the Convention contains an important list of rights and guarantees that are all meant to ensure that every child alleged as or accused of having infringed the penal law receives fair treatment and trial. Most of these guarantees can also be found in article 14 of the International Covenant on Civil and Political Rights , which the Human Rights Committee elaborated and commented on in its general comment No. 13 (1984) (Administration of justice) which is currently in the process of being reviewed. However, the implementation of these guarantees for children does have some specific aspects which will be presented in this section. Before doing so, the Committee wishes to emphasize that a key condition for a proper and effective implementation of these rights or guarantees is the quality of the persons involved in the administration of juvenile justice. The training of professionals, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others is crucial and should take place in a systematic and ongoing manner. These professionals should be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities (see paragraphs 6 to 9 above). Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs. Professionals and staff should act under all circumstances in a manner consistent with the child's dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others, and which promotes the child's reintegration and his/her assuming a constructive role in society (art. 40, para. 1). All the guarantees recognized in article 40, paragraph 2, which will be dealt with hereafter, are minimum standards, meaning that States parties can and should try to establish and observe higher standards, e.g. in the areas of legal assistance and the involvement of the child and her/his parents in the judicial process.

### 1. No retroactive juvenile justice
### (art. 40, para. 2 (a))

41. Article 40, paragraph 2 (a), of the Convention affirms that the rule that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed is also applicable to children (see also article 15 of the International Covenant on Civil and Political Rights). It means that no child can be charged with or sentenced under the penal law for acts or omissions which at the time they were committed were not prohibited under national or international law. In the light of the fact that many States parties have recently strengthened and/or expanded their criminal law provisions to prevent and combat terrorism, the Committee recommends that States parties ensure that these changes do not result in retroactive or unintended punishment of children. The Committee also wishes to remind States parties that the rule that no heavier penalty shall be imposed than the one that was applicable at the time when the criminal offence was committed, as expressed in article 15 of the International Covenant on Civil and Political Rights, is in the light of article 41 of the Convention, applicable to children in the States parties to the International Covenant. No child shall be punished with a heavier penalty than the one applicable at the time of his/her infringement of the penal law. But if a change of law after the act provides for a lighter penalty, the child should benefit from this change.

## 2. The presumption of innocence
## (art. 40, para. 2 (b) (i))

42. The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law. It means that the burden of proof of the charge(s) brought against the child is on the prosecution. The child alleged as or accused of having infringed the penal law has the benefit of doubt and is only guilty as charged if these charges have been proven beyond reasonable doubt. The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from prejudging the outcome of the trial. States parties should provide information about child development to ensure that this presumption of innocence is respected in practice. Due to the lack of understanding of the process, immaturity, fear or other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt.

## 3. The right to be heard
## (art. 12)

43. Article 12, paragraph 2, of the Convention requires that a child be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law.

44. It is obvious that for a child alleged as, accused of, or recognized as having infringed the penal law, the right to be heard is fundamental for a fair trial. It is equally obvious that the child has the right to be heard directly and not only through a representative or an appropriate body if it is in her/his best interests. This right must be fully observed at all stages of the process, starting with pretrial stage when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. But it also applies to the stages of adjudication and of implementation of the imposed measures. In other words, the child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child (art. 12, para. 1), throughout the juvenile justice process. This means that the child, in order to effectively participate in the proceedings, must be informed not only of the charges (see paragraphs 47 and 48 below), but also of the juvenile justice process as such and of the possible measures.

45. The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight. Alleging that the child is criminally responsible implies that he/she should be competent and able to effectively participate in the decisions regarding the most appropriate response to allegations of his/her infringement of the penal law (see paragraph 46 below). It goes without saying that the judges involved are responsible for taking the decisions. But to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behaviour. This also applies to the implementation of the measure(s) imposed. Research shows that an active engagement of the child in this implementation will, in most cases, contribute to a positive result.

### 4. The right to effective participation in the proceedings
### (art 40, para. 2 (b) (iv))

46. A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.

### 5. Prompt and direct information of the charge(s)
### (art. 40, para. 2 (b) (ii))

47. Every child alleged as or accused of having infringed the penal law has the right to be informed promptly and directly of the charges brought against him/her. "Prompt and direct" means as soon as possible and that is when the prosecutor or the judge initially takes procedural steps against the child. It also means that when the authorities decide to deal with the case without resorting to judicial proceedings, the child must be informed of the charge(s) that may justify this approach. This is part of the requirement of article 40, paragraph 3 (b) of the Convention that legal safeguards should be fully respected. The child should be informed in a language he/she understands. This may require a presentation of the information in a foreign language but also a "translation" of the formal legal jargon often used in criminal/juvenile charges into a language that the child can understand.

48. Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the parents or legal guardians or the child's legal or other assistance. It is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge brought against him/her. The Committee is of the opinion that the provision of this information to the parents or legal guardians should not be an alternative to communicating this information to the child. It is most appropriate if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences.

### 6. Legal or other appropriate assistance
### (art. 40, para. 2 (b) (ii))

49. The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. The Convention does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. It is left to the discretion of States parties to determine how this assistance is provided but it should be free of charge. The Committee recommends that the States parties provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.

50. As required by article 14, paragraph 3 (b), of the International Covenant on Civil and Political Rights, the child and his/her assistant must have adequate time and facilities for the preparation of his/her defence. Communications between the child and his/her assistance, either in writing or orally, should take place under such conditions that the confidentiality of such communications is fully respected in accordance with the guarantee provided for in article 40, paragraph 2 (b) (vii), of the Convention, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16). A number of States parties have made reservations regarding this guarantee (article 40, para. 2 (b) (ii)), apparently assuming that it requires exclusively the provision of legal assistance and therefore of a lawyer. That is not the case and such reservations can and should be withdrawn.

### 7. Decisions without delay and with involvement of parents (art. 40, para. 2 (b) (iii))

51. Internationally there is a consensus that for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as possible. The longer the period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized. In this regard, the Committee also refers to article 37 (d) of the Convention, where the child deprived of liberty has the right to a prompt decision on his/her action to challenge the legality of the deprivation of his/her liberty. The term "prompt" is even stronger - and justifiably so given the seriousness of deprivation of liberty - than the term "without delay" (article 40, para. 2 (b) (iii) of the Convention), which is stronger than the term "without undue delay" of article 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights.

52. The Committee recommends that the States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and decision by the court or other competent judicial body. These time limits should be much shorter than those set for adults. But at the same time, decisions without delay should be the result of a process in which the human rights of the child and legal safeguards are fully respected. In this decision-making process without delay, the legal or other appropriate assistance must be present. This presence should not be limited to the trial before the court or other judicial body, but also applies to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police.

53. Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defence of the child or be involved in the decision-making process. However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child (art. 3), to limit, restrict or exclude the presence of the parents from the proceedings.

54. The Committee recommends that States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child's infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.

55. At the same time, the Committee regrets the trend in some countries to introduce the punishment of parents for the offences committed by their children. Civil liability for the damage caused by the child's act may, in some limited cases, be appropriate, in particular for the younger children (e.g. under 16 years of age). But criminalizing parents of children in conflict with the law will most likely not contribute to their becoming active partners in the social reintegration of their child.

### 8. Freedom from compulsory self-incrimination
### (art. 40, para. 2 (b) (iii))

56. In line with article 14, paragraph 3 (g), of the International Covenant on Civil and Political Rights, the Convention requires that a child be not compelled to give testimony or to confess or acknowledge guilt. This means in the first place - and self-evidently - that torture, cruel, inhuman or degrading treatment in order to extract an admission or a confession constitutes a grave violation of the rights of the child (art. 37 (a)) and is wholly unacceptable. No such admission or confession can be admissible as evidence (article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

57. There are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term "compelled" should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child's development, the length of the interrogation, the child's lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: "You can go home as soon as you have given us the true story", or lighter sanctions or release are promised.

58. The child being questioned must have access to a legal or other appropriate representative, and must be able to request the presence of his/her parent(s) during questioning. There must be independent scrutiny of the methods of interrogation to ensure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable. The court or other judicial body, when considering the voluntary nature and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives of the child. Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.

### 9. Presence and examination of witnesses
### (art. 40, para 2 (b) (iv))

59. The guarantee in article 40, paragraph 2 (b) (iv), of the Convention underscores that the principle of equality of arms (i.e. under conditions of equality or parity between defence and prosecution) should be observed in the administration of juvenile justice. The term "to examine or to have examined" refers to the fact that there are distinctions in the legal systems, particularly between the accusatorial and inquisitorial trials. In the latter, the defendant is often allowed to examine witnesses although he/she rarely uses this right, leaving examination of the witnesses

to the lawyer or, in the case of children, to another appropriate body. However, it remains important that the lawyer or other representative informs the child of the possibility to examine witnesses and to allow him/her to express his/her views in that regard, views which should be given due weight in accordance with the age and maturity of the child (art. 12).

### 10. The right to appeal (art. 40, para. 2 (b) (v))

60. The child has the right to appeal against the decision by which he is found guilty of the charge(s) brought against him/her and against the measures imposed as a consequence of this guilty verdict. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body, in other words, a body that meets the same standards and requirements as the one that dealt with the case in the first instance. This guarantee is similar to the one expressed in article 14, paragraph 5, of the International Covenant on Civil and Political Rights. This right of appeal is not limited to the most serious offences.

61. This seems to be the reason why quite a few States parties have made reservations regarding this provision in order to limit this right of appeal by the child to the more serious offences and/or imprisonment sentences. The Committee reminds States parties to the International Covenant that a similar provision is made in article 14, paragraph 5, of the Covenant. In the light of article 41 of the Convention, it means that this article should provide every adjudicated child with the right to appeal. The Committee recommends that the States parties withdraw their reservations to the provision in article 40, paragraph 2 (b) (v).

### 11. Free assistance of an interpreter (art. 40, para. 2 (vi))

62. If a child cannot understand or speak the language used by the juvenile justice system, he/she has the right to get free assistance of an interpreter. This assistance should not be limited to the court trial but should also be available at all stages of the juvenile justice process. It is also important that the interpreter has been trained to work with children, because the use and understanding of their mother tongue might be different from that of adults. Lack of knowledge and/or experience in that regard may impede the child's full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation. The condition starting with "if" - "if the child cannot understand or speak the language used" - means that a child of a foreign or ethnic origin for example, who - besides his/her mother tongue - understands and speaks the official language, does not have to be provided with the free assistance of an interpreter.

63. The Committee also wishes to draw the attention of States parties to children with speech impairment or other disabilities. In line with the spirit of article 40, paragraph 2 (vi), and in accordance with the special protection measures provided to children with disabilities in article 23, the Committee recommends that States parties ensure that children with speech impairment or other disabilities are provided with adequate and effective assistance by well-trained professionals, e.g. in sign language, in case they are subject to the juvenile justice process (see also in this regard the Committee's general comment No. 9 (2006) on the rights of children with disabilities).

## 12. Full respect of privacy
## (arts. 16 and 40, para. 2 (b) (vii))

64. The right of a child to have his/her privacy fully respected during all stages of the proceedings reflects the right to protection of privacy enshrined in article 16 of the Convention. "All stages of the proceedings" includes from the initial contact with law enforcement (e.g. a request for information and identification) up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty. In this particular context, it is meant to avoid harm caused by undue publicity or by the process of labelling. No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offences allegedly committed by children and limit them to very exceptional cases. They must take measures to guarantee that children are not identifiable via these press releases. Journalists who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and when necessary (e.g. in case of recidivism) with penal law sanctions.

65. In order to protect the privacy of the child, most States parties have as a rule - sometimes with the possibility of exceptions - that the court or other hearings of a child accused of an infringement of the penal law should take place behind closed doors. This rule allows for the presence of experts or other professionals with a special permission of the court. Public hearings in juvenile justice should only be possible in well-defined cases and at the written decision of the court. Such a decision should be open for appeal by the child.

66. The Committee recommends that all States parties introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors. Exceptions to this rule should be very limited and clearly stated in the law. The verdict/sentence should be pronounced in public at a court session in such a way that the identity of the child is not revealed. The right to privacy (art. 16) requires all professionals involved in the implementation of the measures taken by the court or another competent authority to keep all information that may result in the identification of the child confidential in all their external contacts. Furthermore, the right to privacy also means that the records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. With a view to avoiding stigmatization and/or prejudgements, records of child offenders should not be used in adult proceedings in subsequent cases involving the same offender (see the Beijing Rules, rules 21.1 and 21.2), or to enhance such future sentencing.

67. The Committee also recommends that the States parties introduce rules which would allow for an automatic removal from the criminal records of the name of the child who committed an offence upon reaching the age of 18, or for certain limited, serious offences where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction).

### E. Measures (see also chapter IV, section B, above)

#### 1. Pretrial alternatives

68. The decision to initiate a formal criminal law procedure does not necessarily mean that this procedure must be completed with a formal court sentence for a child. In line with the observations made above in section B, the Committee wishes to emphasize that the competent authorities - in most States the office of the public prosecutor - should continuously explore the possibilities of alternatives to a court conviction. In other words, efforts to achieve an appropriate conclusion of the case by offering measures like the ones mentioned above in section B should continue. The nature and duration of these measures offered by the prosecution may be more demanding, and legal or other appropriate assistance for the child is then necessary. The performance of such a measure should be presented to the child as a way to suspend the formal criminal/juvenile law procedure, which will be terminated if the measure has been carried out in a satisfactory manner.

69. In this process of offering alternatives to a court conviction at the level of the prosecutor, the child's human rights and legal safeguards should be fully respected. In this regard, the Committee refers to the recommendations set out in paragraph 27 above, which equally apply here.

#### 2. Dispositions by the juvenile court/judge

70. After a fair and just trial in full compliance with article 40 of the Convention (see chapter IV, section D, above), a decision is made regarding the measures which should be imposed on the child found guilty of the alleged offence(s). The laws must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a wide variety of possible alternatives to institutional care and deprivation of liberty, which are listed in a non-exhaustive manner in article 40, paragraph 4 of the Convention, to assure that deprivation of liberty be used only as a measure of last resort and for the shortest possible period of time (art. 37 (b)).

71. The Committee wishes to emphasize that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child, as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40, paragraph 1 of the Convention (see paragraphs 5-14 above). The Committee reiterates that corporal punishment as a sanction is a violation of these principles as well as of article 37 which prohibits all forms of cruel, inhuman and degrading treatment or punishment (see also the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment). In cases of severe offences by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need of public safety and sanctions. In the case of children, such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration.

**72. The Committee notes that if a penal disposition is linked to the age of a child, and there is conflicting, inconclusive or uncertain evidence of the child's age, he/she shall have the right to the rule of the benefit of the doubt (see also paragraphs 35 and 39 above).**

**73. As far as alternatives to deprivation of liberty/institutional care are concerned, there is a wide range of experience with the use and implementation of such measures. States parties should benefit from this experience, and develop and implement these alternatives by adjusting them to their own culture and tradition. It goes without saying that measures amounting to forced labour or to torture or inhuman and degrading treatment must be explicitly prohibited, and those responsible for such illegal practices should be brought to justice.**

**74. After these general remarks, the Committee wishes to draw attention to the measures prohibited under article 37 (a) of the Convention, and to deprivation of liberty.**

### 3. Prohibition of the death penalty

**75. Article 37 (a) of the Convention reaffirms the internationally accepted standard (see for example article 6, paragraph 5, of the International Covenant on Civil and Political Rights) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age. Although the text is clear, there are States parties that assume that the rule only prohibits the execution of persons below the age of 18. However, under this rule the explicit and decisive criterion is the age at the time of the commission of the offence. It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction.**

**76. The Committee recommends the few States parties that have not done so yet to abolish the death penalty for all offences committed by persons under the age of 18 and to suspend the execution of all death sentences for those persons till the necessary legislative measures abolishing the death penalty for children have been fully enacted. The imposed death penalty should be changed to a sanction that is in full conformity with the Convention.**

### 4. No life imprisonment without parole

**77. No child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. For all sentences imposed upon children the possibility of release should be realistic and regularly considered. In this regard, the Committee refers to article 25 of the Convention providing the right to periodic review for all children placed for the purpose of care, protection or treatment. The Committee reminds the States parties which do sentence children to life imprisonment with the possibility of release or parole that this sanction must fully comply with and strive for the realization of the aims of juvenile justice enshrined in article 40, paragraph 1, of the Convention. This means inter alia that the child sentenced to this imprisonment should receive education, treatment, and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his/her possible release. Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.**

## F. Deprivation of liberty, including pretrial detention and post-trial incarceration

78. Article 37 of the Convention contains the leading principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty.

### 1. Basic principles

79. The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.

80. The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of the Convention. An effective package of alternatives must be available (see chapter IV, section B, above), for the States parties to realize their obligation under article 37 (b) of the Convention to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pretrial detention as well, rather than "widening the net" of sanctioned children. In addition, the States parties should take adequate legislative and other measures to reduce the use of pretrial detention. Use of pretrial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review.

81. The Committee recommends that the States parties ensure that a child can be released from pretrial detention as soon as possible, and if necessary under certain conditions. Decisions regarding pretrial detention, including its duration, should be made by a competent, independent and impartial authority or a judicial body, and the child should be provided with legal or other appropriate assistance.

### 2. Procedural rights
### (art. 37 (d))

82. Every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

83. Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours. The Committee also recommends that the States parties ensure by strict legal provisions that the legality of a pretrial detention is reviewed regularly, preferably every two weeks. In case a conditional release of the child, e.g. by applying alternative measures, is not

possible, the child should be formally charged with the alleged offences and brought before a court or other competent, independent and impartial authority or judicial body, not later than 30 days after his/her pretrial detention takes effect. The Committee, conscious of the practice of adjourning court hearings, often more than once, urges the States parties to introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.

84. The right to challenge the legality of the deprivation of liberty includes not only the right to appeal, but also the right to access the court, or other competent, independent and impartial authority or judicial body, in cases where the deprivation of liberty is an administrative decision (e.g. the police, the prosecutor and other competent authority). The right to a prompt decision means that a decision must be rendered as soon as possible, e.g. within or not later than two weeks after the challenge is made.

### 3. Treatment and conditions
### (art. 37 (c))

85. Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of the Convention, "unless it is considered in the child's best interests not to do so", should be interpreted narrowly; the child's best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.

86. This rule does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility.

87. Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities.

88. The Committee draws the attention of States parties to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in its resolution 45/113 of 14 December 1990. The Committee urges the States parties to fully implement these rules, while also taking into account as far as relevant the Standard Minimum Rules for the Treatment of Prisoners (see also rule 9 of the Beijing Rules). In this regard, the Committee recommends that the States parties incorporate these rules into their national laws and regulations, and make them available, in the national or regional language, to all professionals, NGOs and volunteers involved in the administration of juvenile justice.

**89. The Committee wishes to emphasize that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:**

**(a) Children should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities;**

**(b) Every child of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment;**

**(c) Every child has the right to be examined by a physician upon admission to the detention/correctional facility and shall receive adequate medical care throughout his/her stay in the facility, which should be provided, where possible, by health facilities and services of the community;**

**(d) The staff of the facility should promote and facilitate frequent contacts of the child with the wider community, including communications with his/her family, friends and other persons or representatives of reputable outside organizations, and the opportunity to visit his/her home and family;**

**(e) Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately;**

**(f) Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of the Convention must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned;**

**(g) Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms;**

**(h) Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting.**

## V. THE ORGANIZATION OF JUVENILE JUSTICE

90. In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system. As stated in article 40, paragraph 3, of the Convention, States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law.

91. What the basic provisions of these laws and procedures are required to be, has been presented in the present general comment. More and other provisions are left to the discretion of States parties. This also applies to the form of these laws and procedures. They can be laid down in special chapters of the general criminal and procedural law, or be brought together in a separate act or law on juvenile justice.

92. A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

93. The Committee recommends that the States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.

94. In addition, specialized services such as probation, counselling or supervision should be established together with specialized facilities including for example day treatment centres and, where necessary, facilities for residential care and treatment of child offenders. In this juvenile justice system, an effective coordination of the activities of all these specialized units, services and facilities should be promoted in an ongoing manner.

95. It is clear from many States parties' reports that NGOs can and do play an important role not only in the prevention of juvenile delinquency as such, but also in the administration of juvenile justice. The Committee therefore recommends that States parties seek the active involvement of these organizations in the development and implementation of their comprehensive juvenile justice policy and provide them with the necessary resources for this involvement.

## VI. AWARENESS-RAISING AND TRAINING

96. Children who commit offences are often subject to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of these children and often of children in general. This negative presentation or criminalization of child offenders is often based on misrepresentation and/or misunderstanding of the causes of juvenile delinquency, and results regularly in a call for a tougher approach (e.g. zero-tolerance, three strikes and you are out, mandatory sentences, trial in adult courts and other primarily punitive measures). To create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights-based approach to this social problem, the States parties should conduct, promote and/or support educational and other campaigns to raise awareness of the need and the obligation to

deal with children alleged of violating the penal law in accordance with the spirit and the letter of the Convention. In this regard, the States parties should seek the active and positive involvement of members of parliament, NGOs and the media, and support their efforts in the improvement of the understanding of a rights-based approach to children who have been or are in conflict with the penal law. It is crucial for children, in particular those who have experience with the juvenile justice system, to be involved in these awareness-raising efforts.

97. It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of the Convention in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. It should include information on, inter alia, the social and other causes of juvenile delinquency, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities, and the available measures dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings (see chapter IV, section B, above).

## VII. DATA COLLECTION, EVALUATION AND RESEARCH

98. The Committee is deeply concerned about the lack of even basic and disaggregated data on, inter alia, the number and nature of offences committed by children, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other than judicial proceedings (diversion), the number of convicted children and the nature of the sanctions imposed on them. The Committee urges the States parties to systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of the Convention.

99. The Committee recommends that States parties conduct regular evaluations of their practice of juvenile justice, in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration and recidivism, preferably carried out by independent academic institutions. Research, as for example on the disparities in the administration of juvenile justice which may amount to discrimination, and developments in the field of juvenile delinquency, such as effective diversion programmes or newly emerging juvenile delinquency activities, will indicate critical points of success and concern. It is important that children are involved in this evaluation and research, in particular those who have been in contact with parts of the juvenile justice system. The privacy of these children and the confidentiality of their cooperation should be fully respected and protected. In this regard, the Committee refers the States parties to the existing international guidelines on the involvement of children in research.

---

08-42647 (E) 220708